1404.

SUPREME COURT OF THE UNITED STATES.

No. 219.

JOEL PARKER, PLAINTIFF IN ERROR,

vs.

ALONZO L. KANE.

IN ERROR TO THE DISTRICT COURT UNITED STATES FOR THE DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Declaration	2	1
Plea	6	4
Trial	6	4
Judgment	7	5
Bill of exceptions	9	5
Map	112	65
Map	125	73
Bond	165	96
Certificate of clerk	166	97
Writ of error	167	97
Citation and return	168	98

GIDEON, print.

District Court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

At a special term of the district court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Milwaukee, in said district, on the second Monday of November, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the Honorable Andrew G. Miller, judge of said court, presiding; Major J. Thomas, marshal; John M. Miller, clerk. Among other were the following proceedings, to wit:

JOEL PARKER
vs.
ALONZO L. KANE.

Be it remembered, that heretofore, to wit, on the third day of November, in the year of our Lord one thousand eight hundred and fifty-six, the said Joel Parker, by Messrs. Wells and Brigham, his attorneys, filed his declaration in ejectment against Alonzo L. Kane, in the words and figures following, to wit:

Declaration.

In the District Court of the United States for the district of Wisconsin, of the first Monday of November, A. D. 1856.

DISTRICT OF WISCONSIN, *ss.*

Joel Parker, who is a resident of Cambridge, in the State of Massachusetts, and a citizen of the State of Massachusetts, plaintiff in this suit, by Wells and Brigham, his attorneys, complains of Alonzo L. Kane, who is a resident of the city of Milwaukee, in the State of Wisconsin, defendant in this suit; for that whereas the said plaintiff, on the first day of October, in the year of our Lord one thousand eight hundred and fifty-six, was possessed of an undivided moiety or half of lands, situated in the county of Milwaukee, in the State of Wisconsin, in said district, described and bounded as follows, to wit: beginning at the northeast corner of the northeast quarter of section twenty-one (21), in township seven north, of range twenty-two east; running thence west on the section line twelve chains; then south seventeen chains and fifty-six links; thence south, forty degrees west, five chains and fifty-two and one-half links; thence south, thirty-nine degrees and forty-five minutes east, twelve chains and fifty-five and one-third links; thence south thirty-four degrees and thirty-three minutes west, (S. 34° 33′ W.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-nine degrees and forty-five minutes east, (S. 39° 45′ E.) one

hundred and forty-seven and one-half (147½) feet; thence north thirty-four degrees and thirty-three minutes east, (N. 34° 33′ E.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-eight degrees and twenty-five minutes east, (S. 38° 25′ E.) to the south line of lot six (6); thence east on the said south line to the southeast corner of lot six (6); thence north, along the east boundary line of said section twenty-one (21), eighteen (18) chains and seven (7) links; thence north fifty-five degrees and twenty-seven minutes west (N. 55° 27′ W.) nine (9) chains and eight links; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) thirteen (13) chains and nineteen (19) links to the east line of the said section twenty-one; and thence north, on the said east line, to the place of beginning; containing thirty-five and fifty-five hundredths ($35\frac{55}{100}$) acres, more or less; together with the appurtenances, of great value, to wit, of the value of twenty thousand dollars; which said premises the said plaintiff claims in fee; and he, the said plaintiff, being so possessed thereof, the said defendant afterwards, to wit, on the eighteenth day of October aforesaid, entered into the said premises and ejected the said plaintiff therefrom, and now unjustly and unlawfully withholds from the said plaintiff the possession thereof.

And whereas, also, the said plaintiff, on the said first day of October, was possessed of an equal undivided half or moiety of the following described lands, situated in Milwaukee county aforesaid, to wit, lots numbered one and six, and the southwest quarter of the northeast quarter of section twenty-one, town seven north, of range twenty-two east, with the appurtenances, of great value, to wit, of the value of thirty thousand dollars; which said premises the said plaintiff claims in fee; and he, the said plaintiff, being so possessed thereof, the said defendant afterwards, to wit, on the eighteenth day of October aforesaid, entered into said last named premises and ejected the said plaintiff therefrom, and now unjustly and unlawfully withholds from the said plaintiff the possession thereof.

And whereas, also, the said plaintiff, on the said first day of October, was possessed of an equal undivided half or moiety of the following described lands, situated in the county aforesaid, to wit, the southwest quarter of the northeast quarter of section twenty-one, town seven north, of range twenty-two east, with the appurtenances, of great value, to wit, of the value of twenty thousand dollars; which said premises the said plaintiff claims in fee; and that he, the said plaintiff, being so possessed thereof, the said defendant afterwards, to wit, on the said eighteenth day of October aforesaid, entered into the said premises last named and ejected the said plaintiff therefrom, and now unjustly and unlawfully withholds from the said plaintiff the possession thereof.

And whereas, also, the said plaintiff, on the said first day of

October, was possessed of an equal undivided one-eighth part of the following described lands situated in Milwaukee county aforesaid, to wit, the southwest quarter of the northeast quarter of section twenty-one, town seven north, range twenty-two east, with the appurtenances, of great value, to wit, of the value of ten thousand dollars; which said premises the said plaintiff claims in fee; and that he, the said plaintiff, being so possessed thereof, the said defendants afterwards, to wit, on the eighteenth day of October aforesaid, entered into the said last named premises and ejected the said plaintiff therefrom, and now unjustly and unlawfully withholds from the said plaintiff the possession thereof, to the damage of the said plaintiff of fifty thousand dollars, and therefore he brings suit, &c., &c.

WELLS & BRIGHAM,
Pl'ff's Att'ys.

To ALONZO L. KANE:

You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the office of the clerk of said court, in the city of Milwaukee, on the first Monday of November next. That upon filing the same, a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such rule; and that if you neglect so to appear, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 20th day of October, 1856.

Yours, &c.,
WELLS & BRIGHAM,
Pl'ff's Att'ys.

DISTRICT OF WISCONSIN, *ss.*

Jerome R. Brigham, being duly sworn, deposes and says that he is one of the firm of Wells and Brigham, the attorneys for Joel Parker, the plaintiff named in the within declaration, and that said firm have written authority and directions from said plaintiff to commence an action of ejectment for the premises within described, against the defendant named in said declaration, and further saith not.

JEROME R. BRIGHAM.

Subscribed and sworn to before me this 20th day of October, A. D. 1856.

B. K. MILLER, *Clerk.*

DISTRICT OF WISCONSIN, *ss.*

Jerome R. Brigham, being duly sworn, deposes and says that he served the foregoing declaration, notice and affidavit on the

within named defendant, by giving him a true copy of said declaration, with said notice and affidavit, on the 20th day of October, A. D. 1856.

JEROME R. BRIGHAM.

Subscribed and sworn to before me this 21st day of October, A. D. 1856.

B. K. MILLER, *Clerk.*

Plea.

And afterwards, to wit, on the third day of November, A. D. 1856, came the said defendant, by his attorneys, Messrs. Brown & Ogden, and filed his plea as follows:

District Court of the United States for the district of Wisconsin.

ALONZO L. KANE
vs. } Ejectment.
JOEL PARKER.

And the said defendant, Alonzo L. Kane, by Brown & Ogden, his attorneys, comes and says, that he is not guilty of unlawfully withholding the premises claimed by the said Joel Parker as alleged in said declaration of the said Parker. And of this he, the said defendant, puts himself upon the country. And the said plaintiff doth the like.

BROWN & OGDEN,
Att'ys for Def't.

Trial.

And afterwards, and at a special term of the said court, begun and held, according to law, at the city of Milwaukee, in said district, on the first Monday of September, A. D. 1857; present the Honorable Andrew G. Miller, judge of said court, presiding.

On the fourth day of the said term, to wit, on the tenth day of September, A. D. 1857, the following proceedings were had, to wit:

JOEL PARKER
vs. } At Law.
ALONZO L. KANE.

This day came the parties by their counsel, and the issue herein joined came on to be tried; whereupon a jury was called to try the same, who came, to wit: George W. Clason, Joel Wilcox, Priam B. Hill, Joseph C. James, John Story, Enoch Chase, Walter S. Hunn, Edward Button, William H. Byron, John Everts, James B. Kellogg and Samuel Chandler, twelve free, honest, and lawful men of this district, who were severally sworn and empanelled by the court, and the trial not being concluded the same was adjourned until to-morrow morning.

And afterwards, at this same term, to wit, on the fifth day thereof, to wit, on the eleventh day of September, A. D. 1857, the following other proceedings were had, to wit:

JOEL PARKER
vs. } At Law.
ALONZO L. KANE.

This day came the parties by their counsel, and the trial of the issue herein was resumed, and the said jurors of the jury being charged by the court, on their several oaths severally do say, that the defendant is not guilty of unlawfully withholding the premises claimed by the said plaintiff as alleged in the declaration.

And now, at this same term, to wit, on the thirteenth day thereof, to wit, on the twenty-eighth day of November, A. D. 1857, the following other proceedings were had, to wit:

JOEL PARKER
vs. } At Law.
ALONZO L. KANE.

This day it is considered and adjudged by this court, now here, that the plaintiff take nothing by his said suit, and that the defendant do have and recover of the said plaintiff sixty-one dollars and eleven cents, his costs about his defence in this behalf by him expended, and that he have execution therefor.

Judgment roll signed November 28th, A. D. 1857. Costs $61 11.

J. M. MILLER, *Clerk.*

Judgment roll filed November 28th, A. D. 1857, at 5 o'clock, p. m.

J. M. MILLER, *Clerk.*

And afterwards, and at this same term, and on the fourteenth day thereof, to wit, on the thirtieth day of November, A. D. 1857, the following other proceedings were had, to wit:

JOEL PARKER
vs. } At Law.
ALONZO L. KANE.

This day bill of exceptions filed, and ordered by the court that a writ of error and a citation be issued on the entering into bond for costs, with surety in the penalty of five hundred dollars.

Which said bill of exceptions is as follows:

In District Court of the United States for the district of Wisconsin.

JOEL PARKER
vs.
ALONZO L. KANE.

Be it remembered, that at a term of the district court of the United States for the district of Wisconsin, begun and held in the

court-room, in the city of Wilwaukee, in said district, on the first Monday, being the seventh day of September, in the year of our Lord one thousand eight hundred and fifty-seven, the Hon. Andrew G. Miller, judge of said court, presiding, on the fourth day of said term, to wit, on the tenth day of September aforesaid, the above entitled cause came on to be tried on the issue joined between the parties thereto by a jury of said district, for that purpose duly empanelled, chosen, and sworn to try said issue between said parties. And on the trial of said issue the counsel for the plaintiff, to maintain and prove said issue on his part, produced and offered and read in evidence to the jury a duly exemplified copy under the hand of the proper officer, and the seal of the proper office, of certain letters patent of the United States of America, dated on the tenth day of August, in the year of our Lord one thousand eight hundred and thirty-seven, issued under the hand of the President of the United States, and under the seal of the General Land Office, on certificate No. 521 of the register of the land office at Green Bay, and granting unto William E. Dunbar, his heirs and assigns forever, the lot number one, and south half of the northeast quarter of section twenty-one, in township seven north, of range twenty-two east, in the district of land subject to sale at Green Bay, Wisconsin Territory, containing one hundred and twenty-nine acres and twenty-five hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general.

The counsel for the plaintiff then read the deposition of Milton Kilbourn and Richard Montague, to the reception of which as evidence the counsel for the defendant objected, on the ground that the deposition was sought to be introduced to prove the contents of a deed which had been voluntarily destroyed, and that having been voluntarily destroyed, the grantee in said deed, and those claiming under him, are estopped from proving the contents of said deed by parol, and that the depositions could not be received to show title; and in particular, the counsel for the defendant objected to the testimony of Richard Montague, on the ground of interest in the witness.

Said depositions were received by the court, subject to such objections to be afterwards determined, as follows:

The deposition of Richard Montague.

I knew William E. Dunbar in his lifetime; I think he died the latter part of September or fore part of October, A. D. 1846; he left three children, of the following ages, at the time of his death, viz: George Dunbar, about ten years old; Mary A. Dunbar, about eight years old; and Caroline E. Dunbar, about six or eight months old.

On the eleventh day of July, A. D. 1835, I purchased of William E. Dunbar one equal and undivided half of said William E. Dun-

bar's claim, into or upon the northeast fractional quarter of section twenty-one (21), in township seven, range twenty-two east, of the fourth principal meridian, being the same fractional quarter claimed by Philander Bird, and by him sold to said William E. Dunbar. Said land was situated in Milwaukee county, Wisconsin Territory, and is now within the limit of the city of Milwaukee, in the State of Wisconsin. I paid fifty dollars to William E. Dunbar for the claim of the undivided half of the above described fractional quarter. The agreement in relation to the said purchase was in writing, and my recollection is, that it was attached to my deposition taken in relation to the land in question in this cause in the case of Joel Parker vs. Charles J. Kane et al., heretofore pending. I think, in the Milwaukee circuit court it was also agreed between me and the said William E. Dunbar that I should furnish the money with which to enter the above described fractional quarter, and said William E. Dunbar, on his part, agreed to use his best endeavors to secure the said land, and to purchase the same at the land sale. I furnished the money to said William E. Dunbar early in the fall of A. D. 1835, which he received, and with which he purchased said tract of land at the sale of government lands in the fall of A. D. 1835. Said William E. Dunbar entered the said tract of land in his own name. I furnished the money to enter the whole of the above described tract of land, and also the money to pay one-half of said Dunbar's expenses of attending the said land case. Some time in the spring of A. D. 1836, said William E. Dunbar, according to his previous agreement, deeded to me the equal undivided one-half of the whole of the above described fractional quarter; said deed was given to me by said Dunbar in consideration of my having furnished the money to enter said land, and paying one-half of Dunbar's expenses of attending the land sale, &c.

After receiving said deed from said Dunbar, and some time in the year A. D. 1837, I bought of said Dunbar a claim adjoining a farm of mine in Rock river, in the county of Winnebago, and State of Illinois, for which I agreed to give said Dunbar one-fourth of the land above described, situated in Milwaukee county, in the State of Wisconsin, and as the deed from said Dunbar to me conveying the equal undivided one-half of the above described fractional quarter had never been recorded, it was agreed betwixt said Dunbar and myself that it should be destroyed, and that said Dunbar should give me instead thereof a deed of one-fourth of all the said fractional quarter in Milwaukee county aforesaid. Accordingly, on the eighteenth day of December, A. D. 1837, said William E. Dunbar and Rebecca, his wife, (now Rebecca Shaw, wife of Bela Shaw, esq.,) executed to me, for the consideration aforesaid, a deed for a tract of land described as follows, to wit: one "equal undivided fourth part of the following described parcel or tract of land, viz., lot one (1) and six (6), being that part of the northeast quarter lying east of

the Milwaukee river, in section number twenty-one (21), in township number seven (7) north, of range twenty-two (22) east, of the fourth principal meridian, in Milwaukee county, and Territory of Wisconsin." Said deed was acknowledged and recorded in the register's office of Milwaukee county, in vol. E of deeds, pages 386 and 387; said deed was drawn by said Dunbar, and I stated to him when I received said deed that the description of the land was not the same as that contained in the first deed from him (Dunbar); he replied that the land had been divided and numbered, and that the description he had given in the deed was correct, and as I had no means of knowing that it was not correct, I received said deed from said Dunbar, with the express understanding from said Dunbar's remarks and conversations, that it conveyed one-fourth of the whole land entered by said Dunbar as before stated. The description of the land in the first mentioned deed, from said Dunbar to me, was taken from the certificate of the receiver of the land office at Green Bay. At the time the second deed, above mentioned, was executed, the first mentioned deed was given up, by me, to said Dunbar, and by him destroyed. On the fifth day of July, A. D. 1836, I executed to John P. Chapin, of Chicago, in the State of Illinois, a bond for a deed of what I believe to be one equal undivided eighth part of the tract of land described in the first deed, above mentioned, from said William E. Dunbar to me, in which bond the land was described as follows: "The one equal and undivided eighth part of all that tract or parcel of land known and described as follows, to wit: lot number one (1), and the south half of the northeast quarter of section number twenty-one (21), in township number seven (7) north, of range twenty-two (22) east, of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres, and being the same fractional quarter section described in certificate number 521, given to one William E. Dunbar, by the receiver, at Green Bay, and by him conveyed to the said Richard Montague.

I have had several conversations with said William E. Dunbar, in his lifetime, in relation to the tract of land described as the northeast quarter of section twenty-one, in township No. seven, of range twenty-two east, of the fourth principal meridian, situated in the county of Milwaukee, and State of Wisconsin, and he always admitted, on said conversations, that I owned an undivided half of said tract of land; and after I sold said Dunbar an undivided half of my half of said land, said Dunbar admitted that I still owned an undivided fourth part of the whole of said tract of land, and said Dunbar never claimed to own a greater interest in any one portion of said tract of land than another.

I have received a release from the plaintiff, Joel Parker, and also from John P. Chapin, which release is hereto attached, marked A.

Although I gave John P. Chapin a bond for a deed of an undivided eighth part of the said tract of land as above set forth, yet I afterwards made a different arrangement with said Chapin, and only deeded to him an undivided sixteenth of said tract of land instead of an undivided eighth, as specified in the bond given by me to Chapin. After selling said undivided sixteenth, I owned three-sixteenths of said fractional quarter. For several years after I deeded the said one-sixteenth to said Chapin I paid the said William E. Dunbar the taxes for three-sixteenths of the whole of said fractional quarter. I paid the taxes to said Dunbar for the reason that he owned other property in Milwaukee, and could more conveniently pay the taxes than myself. I never knew but what William E. Dunbar had deeded to me, in the second deed referred to from William E. Dunbar to me in my deposition, an equal undivided one-quarter of the said fractional quarter above referred to, until I was informed otherwise by Jason March, esq., of Rockford, the attorney of the administrator of the estate of the said William E. Dunbar; he stated that there was an error, and he believed it to be an error, in the second deed from Dunbar to me; he also stated that he had conversed with Rebecca Shaw, formerly the wife of William E. Dunbar, and that she also believed it to be a mistake. He said that the deed did not give a proper description of the land, and therefore did not include an undivided fourth of the whole fractional quarter. He stated to me that the mistake could be rectified by a proceeding in chancery. Shortly after I called upon Bela Shaw, (husband of Rebecca Shaw, formerly the wife of William E. Dunbar,) and he informed me that, upon examining the records, they had ascertained that said William E. Dunbar was entitled to more of said fractional quarter than they had supposed. He also stated that it was necessary to sell said Dunbar's interest in said land for the benefit of said Dunbar's heirs, but that he assured me that he would not sell the portion of said land in relation to which any question could arise.

The deposition of Milton Kilbourn above mentioned, and read in evidence, is in substance as follows:

I was acquainted with William E. Dunbar in his lifetime; he died in Rockford, in Winnebago county, in the State of Illinois, in the fall of A. D. 1846; he left a widow, Rebecca Dunbar, (now Rebecca Shaw,) and three children, viz: George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar.

All that I know in relation to any agreement or deeds between William E. Dunbar and Richard Montague, is, that I have seen the release from Dunbar to Montague of an equal undivided one-half of said land described as follows: the northeast quarter of section twenty-one, in township No. seven, range twenty-two, being in what is now the city and county of Milwaukee, Wisconsin; and I have also seen the agreement between said William E. Dun-

bar and said Richard Montague in relation to the purchase of said tract of land; and I have also seen the deed from said William E. Dunbar to said Richard Montague, conveying an undivided fourth of the land therein described, as stated in the deposition of said Montague.

For two or three years previous to the death of the said William E. Dunbar, I had occasional conversations with him in relation to the northeast quarter of section twenty-one, in township No. seven north, of range twenty-two east, in Milwaukee county, in the State of Wisconsin, and I always understood him to claim but an undivided half of the above described quarter section. I had formerly owned land in Wisconsin, near the above described tract of land, in connection with said William E. Dunbar, and I was well acquainted with said tract of land.

Some time in the year 1847 or 1848, I called upon Bela Shaw, esq., (husband of Rebecca Shaw, formerly Rebecca Dunbar,) at the request of Joel Parker, the plaintiff, for the purpose of making some inquiries in relation to purchasing said William E. Dunbar's interest in the tract of land hereinbefore described, situated in the county of Milwaukee, and State of Wisconsin; said Bela Shaw only claimed an undivided half of said tract of land for the estate of William E. Dunbar. About the same time, I also called upon Eleazer H. Potter, one of the administrators of the estate of William E. Dunbar, deceased, and he only claimed an undivided half of said tract of land, amounting, as he stated, to about sixty-five acres. Some time after, I endeavored to purchase for the plaintiff, Joel Parker, said Dunbar's interest in the above described land; said Bela Shaw informed me that after searching the records they had found that said William E. Dunbar was legally entitled to more than one-half of said land. I was afterward informed by said Shaw, that they had sold a portion of said land, and that they had reserved from sale that portion of said land which was in dispute.

The following is a copy of the release referred to, in the deposition of Richard Montague, and attached thereto, marked "A."

"Know all men by these presents, that we, John P. Chapin, of the city of Chicago, in the State of Illinois, and Joel Parker, of the city of Cambridge, in the Commonwealth of Massachusetts, in consideration of one dollar, to us paid by Richard Montague, of Rockford, in the State of Illinois, the receipt of which is hereby acknowledged, do hereby release and discharge the said Montague from all claim and demand which we, or either of us, have, or may have, against him for any damages which have accrued, or may accrue to either of us, by reason of any breach of the covenants contained in a deed from said Montague to said Chapin, dated January 13th, 1838, purporting to convey to said Chapin one undivided sixteenth part of lot number one, and the south half of the north-

east quarter of section number twenty-one, in town number seven north, and range twenty-two east, which said premises were subsequently conveyed by said Chapin to said Parker. It being understood and declared, that nothing herein contained is to be construed as releasing or affecting in any way any title, legal or equitable, conveyed by said deed.

Witness our hands and seals this seventeenth day of March, in the year of our Lord one thousand eight hundred and fifty-one.

(Signed) JOHN P. CHAPIN, [SEALED.]
JOEL PARKER, [SEALED.]

The counsel for the plaintiff also at the same time, and in connection with the offer of the depositions aforesaid, produced and offered a certain other instrument of release executed by the plaintiff, Joel Parker, and by John P. Chapin, to said Richard Montague, and called Jerome R. Bingham as a witness, who being attorney of the court and in this cause, was not sworn, but made his statement in his place as attorney, which was received as evidence in said cause, that the last named instrument of release was received by him from the plaintiff in this cause, and that he, the witness, forwarded the same to said Richard Montague, on the 9th of March, A. D. 1857, and that he had on the day of the trial of this cause received it from the hands of Richard Montague, for the purpose of being presented with his deposition in this cause.

The release was read as follows:

Know all men by these presents, that we, Joel Parker, of Cambridge, Massachusetts, and John P. Chapin, of the city of Chicago, Illinois, in consideration of one dollar to us paid by Richard Montague, of Rockford, in the State of Illinois, the receipt whereof is hereby acknowledged, do hereby release and discharge the said Montague and his heirs, executors, and administrators, from any and all claim and demand of any nature which we or either of us have or may have against him or them for or on account of any damage which has accrued or may accrue to us, or to either of us, by reason of any breach of the covenants contained in a deed from said Montague to said Chapin, dated January 13, A. D. 1838, and purporting to convey to said Chapin an undivided sixteenth part of lot one, and the south half of the northeast quarter of section twenty-one, town seven, range twenty-two, in Milwaukee county, Wisconsin, which said premises were subsequently conveyed by said Chapin to said Parker, or by reason of any breach of the covenants contained in a deed from said Montague to one Phineas Fiske, dated October 27th, A. D. 1842, and purporting to convey to said Fiske three-sixteenths undivided of lots one and six, being that part of the northeast quarter of the section above described, lying east of the Milwaukee river, which said premises were subsequently conveyed by the heirs of said Fisk, and the grantors of

said heirs to said Parker, or by reason of any breach of any covenant or obligation whatsoever, in any deed or instrument whatsoever, of said Montague, conveying, or purporting, or undertaking to convey, any of the above described lands, or any interests therein, or any part thereof, for which breach we or either of us have or may have any claim or demand for damages against said Montague, or his heirs, executors, or administrators, it being understood, and declared, that nothing herein contained is to be, or shall be, construed as releasing or affecting in any way any title, legal or equitable, conveyed by said deeds or by any of them.

In witness whereof, we have hereunto set our hands and seals, this eleventh day of December, A. D. 1856.

(Signed) JOEL PARKER, [SEAL.]
JOHN P. CHAPIN, [SEAL.]

The counsel for the plaintiff, further to maintain and prove said issue on his part, produced and read in evidence a properly certified copy of the record of a deed, dated January 13th, A. D. 1838, and made by Richard Montague and Content W. his wife, to John P. Chapin, and duly conveying to said Chapin, his heirs and assigns forever, "the equal undivided sixteenth part of the following described lots or parcels of land, lying and being in the county of Milwaukee, and Territory of Wisconsin, and known and described as follows, to wit: lot number one (1), and the south half of northeast quarter of section number twenty-one (21), in township number seven (7) north, of range (22) east of the fourth principal meridian," which deed, having been duly acknowledged, was recorded in the office of the register of deeds for Milwaukee county, in vol. F of deeds, on page 215, October 8th, 1839.

The counsel for the plaintiff, also to maintain and prove the said issue on his part, produced and offered, and read in evidence to the jury, duly certified copies of deeds of conveyance as follows, to wit: a deed of John P. Chapin to Joel Parker, dated May 18th, A. D. 1841, duly executed and acknowledged, and recorded May 27, 1841, in the proper office in Milwaukee county, Wisconsin, in vol. H of deeds, at page 105, conveying "an equal undivided sixteenth part of lot number one (1), and the south half of the northeast quarter of section number twenty-one (21), in township number seven (7) north, of range twenty-two (22) east of the fourth principal meridian, in the district of lands subject to sale at Milwaukee, the said tracts containing, in the whole, one hundred and twenty-nine acres and one-fourth of an acre, (129¼,) more or less."

Also a deed of Richard Montague to Phineas Fisk, dated October 27th, A. D. 1842, duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. J of deeds, at page 169, December 13, 1842, and conveying "all those certain tracts or parcels of land situate and being in the county of

Milwaukee and Territory of Wisconsin, described and bounded as follows, to wit: three (3) equal undivided sixteenths of the following parcels of land, viz: lot one (1) and six (6), being that part of the northeast quarter of section No. twenty-one, in township No. seven north, of range twenty-two east of the fourth principal meridian, lying east of the Milwaukee river, being the same premises conveyed to said Montague by W. E. Dunbar, by deed, dated Dec. 18, 1837, (excepting one-sixteenth which has heretofore been sold by the said party of the first part, Richard Montague.")

Also a deed of William E. Dunbar and Rebecca C., his wife, to Oliver Holman, dated June 16th, A. D. 1836, duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. E of deeds, at page 380, July 11, 1838, and conveying "one equal undivided fourth part of all of that tract or parcel of land known and described as follows, to wit: lot No. one (1), and the south half of the northeast quarter of section No. twenty-one (21), in township No. seven (7) north, of range twenty-two east of the fourth principal meridian, the same containing one hundred and twenty-nine one-fourth acres, more or less, and being the same fractional quarter section described in certificate No. 521, given to said Dunbar by the receiver of public money at Green Bay."

Also a deed of Oliver Holman and Caroline, his wife, to Benjamin F. Adams, dated February 16th, A. D. 1843, duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. K of deeds, on page 380, August 2d, 1843, and conveying one equal undivided fourth part of all that tract or parcel of land known and described as follows, to wit: lot number one (1), and the south half of the northeast quarter of section No. twenty-one (21), in township No. seven (7) north, of range twenty-two east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres, more or less, being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay, and deeded by said Dunbar to Oliver Holman, by his deed recorded in Milwaukee co. records, vol. E, and pages 380, 381, and 382."

Also a deed of Benjamin F. Adams and Louisa R., his wife, to Charles Stratten, dated June 10th, A. D. 1847, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 31 of deeds, on page 367, 9th November, 1850, and conveying "one equal undivided eighth part of all that tract or parcel of land known and described as follows, viz: lot number one (1), and the south half of the northeast quarter of section No. twenty-one (21), in township No. seven (7) north, of range twenty-two (22) east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres,

more or less, and being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay, and of which one-fourth was conveyed by said Dunbar to Oliver Holman, and by said Holman to said Adams, reference to the records of Milwaukee county for the description in said deeds, intending hereby to convey one-half of all the lands as conveyed by said Dunbar."

Also a deed of Benjamin F. Adams and Louisa R., his wife, to Joel Parker, dated December 10th, A. D. 1847, duly executed, acknowledged, and recorded in the proper office in Milwaukee county, in vol. 31 of deeds, at page 368, November 9, 1850, and conveying "one equal undivided eighth part of all that tract or parcel of land known and described as follows, viz: lot number one (1), and the south half of the northeast quarter of section number twenty-one (21), in township No. seven (7) north, of range twenty-two (22) east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres, more or less, and being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay."

Also a deed of Charles Stratton to Joel Parker, dated June 10th, A. D. 1847, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 31 of deeds, at page 369, November 9th, 1850, and conveying one equal undivided eighth part of all that tract or parcel of land known and described as follows, viz: lot number one (1), and the south half of the northeast quarter of section number twenty-one (21), in township No. seven (7) north, of range twenty-two (22) east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres, more or less, and being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay."

The counsel for the plaintiff then, further to maintain and prove said issue on his part, produced and offered and read in evidence to the jury in this cause the deposition of Benjamin F. Adams, taken in due form of law and according to the practice of this court, under and by virtue of a commission regularly issued out of and under the seal of this court, and duly executed and returned, which deposition so read to the jury is as follows:

I knew Phineas Fisk in his lifetime; he married a sister of my wife. He died at Keene, in the State of New Hampshire, in November, A. D. 1842. He left four children, two daughters and two sons. Their names were Mary Hart Fisk, Julia Fisk, Phineas Stearns Fisk, and Francis Skinner Fisk. Mary Hart was aged thirty years, Julia was aged twenty-seven years and six months, Phineas Stearns was aged about twenty-five years, and Francis

Skinner was aged seventeen years, at the time Phineas Fisk died. The two daughters were married at the time of his death; Julia married William Densmore in 1834; Mary Hart married Thomas M. Edwards in May, 1840; Phineas Fisk had no other children than those above mentioned, save one named Warren, who died about 1836, unmarried. The four above named are the sole heirs of Phineas Fisk.

The counsel for the plaintiff then, further to maintain and prove the issue in this cause on his part, produced, and offered and read in evidence to the jury, duly authenticated copies from the record of deeds of conveyance, as follows:

A deed of Phineas S. Fisk, and Helen his wife, to Thomas M. Edwards, dated May 30, 1848, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, on page 260, Dec. 23d, 1850, and conveying "one undivided fourth part of three undivided sixteenth parts of the following tracts or parcels of land, situate and being in the county of Milwaukee, and State of Wisconsin, viz: lot No. one (1) and six (6), being that part of the northeast quarter of section No. twenty-one (21), in township No. seven (7) north, of range (22) twenty-two east of the fourth principal meridian, lying east of the Milwaukee river."

Also a deed of Thomas M. Edwards, and Mary H. his wife, in his and her right, William Densmore and Julia A. Densmore, his wife, in her right, and Francis S. Fisk, all of Keene, of the county of Cheshire and State of New Hampshire, (the said Mary, Julia, and Francis, being children and heirs and legatees of Phineas Fisk, late of Keene, deceased,) to Joel Parker, dated November 11th, A. D. 1850, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, on page 262, December 23d, 1850, and conveying three undivided sixteenth parts of the west half of the south half of the northeast quarter of section number twenty-one (21), in township seven (7) north, of range twenty-two (22) east, being in the county of Milwaukee and State of Wisconsin.

Also another deed by the same parties and to the same party as in the last named deed, dated November 11, 1850, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, at page 261, December 23, 1850, and "conveying three undivided sixteenth parts of lots one (1) and six (6) in the northeast quarter of section twenty-one (21), in town seven (7) north, of range twenty-two (22) east, being in the county of Milwaukee, and State of Wisconsin."

Also a deed of Richard Montague, and Caroline his wife, to Joel Parker, dated December 30th, 1850, duly executed, acknowledged, March 1st, 1851, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 59 of deeds, on page 128, August 27,

more or less, and being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay, and of which one-fourth was conveyed by said Dunbar to Oliver Holman, and by said Holman to said Adams, reference to the records of Milwaukee county for the description in said deeds, intending hereby to convey one-half of all the lands as conveyed by said Dunbar."

Also a deed of Benjamin F. Adams and Louisa R., his wife, to Joel Parker, dated December 10th, A. D. 1847, duly executed, acknowledged, and recorded in the proper office in Milwaukee county, in vol. 31 of deeds, at page 368, November 9, 1850, and conveying "one equal undivided eighth part of all that tract or parcel of land known and described as follows, viz: lot number one (1), and the south half of the northeast quarter of section number twenty-one (21), in township No. seven (7) north, of range twenty-two (22) east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres, more or less, and being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay."

Also a deed of Charles Stratton to Joel Parker, dated June 10th, A. D. 1847, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 31 of deeds, at page 369, November 9th, 1850, and conveying one equal undivided eighth part of all that tract or parcel of land known and described as follows, viz: lot number one (1), and the south half of the northeast quarter of section number twenty-one (21), in township No. seven (7) north, of range twenty-two (22) east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth acres, more or less, and being the same fractional quarter section described in certificate No. 521, given to William E. Dunbar by the receiver of public moneys at Green Bay."

The counsel for the plaintiff then, further to maintain and prove said issue on his part, produced and offered and read in evidence to the jury in this cause the deposition of Benjamin F. Adams, taken in due form of law and according to the practice of this court, under and by virtue of a commission regularly issued out of and under the seal of this court, and duly executed and returned, which deposition so read to the jury is as follows:

I knew Phineas Fisk in his lifetime; he married a sister of my wife. He died at Keene, in the State of New Hampshire, in November, A. D. 1842. He left four children, two daughters and two sons. Their names were Mary Hart Fisk, Julia Fisk, Phineas Stearns Fisk, and Francis Skinner Fisk. Mary Hart was aged thirty years, Julia was aged twenty-seven years and six months, Phineas Stearns was aged about twenty-five years, and Francis

Skinner was aged seventeen years, at the time Phineas Fisk died. The two daughters were married at the time of his death; Julia married William Densmore in 1834; Mary Hart married Thomas M. Edwards in May, 1840; Phineas Fisk had no other children than those above mentioned, save one named Warren, who died about 1836, unmarried. The four above named are the sole heirs of Phineas Fisk.

The counsel for the plaintiff then, further to maintain and prove the issue in this cause on his part, produced, and offered and read in evidence to the jury, duly authenticated copies from the record of deeds of conveyance, as follows:

A deed of Phineas S. Fisk, and Helen his wife, to Thomas M. Edwards, dated May 30, 1848, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, on page 260, Dec. 23d, 1850, and conveying "one undivided fourth part of three undivided sixteenth parts of the following tracts or parcels of land, situate and being in the county of Milwaukee, and State of Wisconsin, viz: lot No. one (1) and six (6), being that part of the northeast quarter of section No. twenty-one (21), in township No. seven (7) north, of range (22) twenty-two east of the fourth principal meridian, lying east of the Milwaukee river."

Also a deed of Thomas M. Edwards, and Mary H. his wife, in his and her right, William Densmore and Julia A. Densmore, his wife, in her right, and Francis S. Fisk, all of Keene, of the county of Cheshire and State of New Hampshire, (the said Mary, Julia, and Francis, being children and heirs and legatees of Phineas Fisk, late of Keene, deceased,) to Joel Parker, dated November 11th, A. D. 1850, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, on page 262, December 23d, 1850, and conveying three undivided sixteenth parts of the west half of the south half of the northeast quarter of section number twenty-one (21), in township seven (7) north, of range twenty-two (22) east, being in the county of Milwaukee and State of Wisconsin.

Also another deed by the same parties and to the same party as in the last named deed, dated November 11, 1850, and duly executed, acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, at page 261, December 23, 1850, and "conveying three undivided sixteenth parts of lots one (1) and six (6) in the northeast quarter of section twenty-one (21), in town seven (7) north, of range twenty-two (22) east, being in the county of Milwaukee, and State of Wisconsin."

Also a deed of Richard Montague, and Caroline his wife, to Joel Parker, dated December 30th, 1850, duly executed, acknowledged, March 1st, 1851, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 59 of deeds, on page 128, August 27,

1857, and conveying "all the right, title and interest, claim and demand of the said Montague, either in law or in equity, to the west half of the south half of the northeast quarter of section No. twenty-one (21), in township number seven (7) north, of range twenty-two (22) east, being in the county of Milwaukee and State of Wisconsin."

The counsel for the plaintiff then, further to maintain and prove the said issue on his part, read in evidence a deed dated December 18th, 1837, made by William E. Dunbar and Rebecca his wife, to Richard Montague, conveying lands described in said deed as follows: "One equal undivided fourth part of the following described parcel or tract of land, viz: lots one (1) and six (6), being that part of the northeast quarter lying east of the Milwaukee river, in section No. twenty-one (21), in township number seven (7) north, of range twenty-two east of the fourth principal meridian, in Milwaukee county and Territory of Wisconsin, together with all and singular the hereditaments, &c.;" which deed was duly executed and acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. E of deeds, at pages 386 and 387, on the 21st day of July, A. D. 1838.

The counsel for the plaintiff then read in evidence the deposition of Benjamin F. Adams, a witness residing in the State of Illinois, taken under and by virtue of a commission duly issued out of and under the seal of this court, and executed and returned according to the rules of practice of this court, as follows, to wit:

In the month of May, A. D. 1836, Oliver Holman, then of Keene, in the State of New Hampshire, and a partner in business with me in said Keene, proceeded to the western States with moneys belonging to our said firm, to invest in landed property. On his return, in July or August following, he exhibited to me for my examination, together with other evidences of title to lands he had purchased, a deed of conveyance from William E. Dunbar and Rebecca E. Dunbar to himself, of the one undivided one-fourth part of lot one (1) and the south half of the northeast quarter of section seven (7) north, of range twenty-two east of the fourth principal meridian, the same containing one hundred and twenty-nine and one-fourth (129¼) acres, more or less; which said deed was recorded on the eleventh day of July, A. D. 1838, in vol. E of deeds, on pages 380, 381, and 382, in the registry of the county of Milwaukee.

In the month of June, or early in July, A. D. 1837, I was at Rockford, in the State of Illinois, then the place of residence of the said William E. Dunbar, and spent several days there. During that time I frequently saw the said William E. Dunbar; was at his house, and had various conversations with him with regard to his property, &c., and particularly in regard to the land described in his said deed to Holman, he and myself both having a pecuniary interest in it. He stated to me the circumstances in regard to his

purchase of the land. He said that he was at Milwaukee, and found the person that had a claim to the land which he wished to sell; the said Dunbar said that he had not the money to pay for it, or to pay for the land when it should come into market, but knew that Richard Montague had the money, or could get it; that he obtained the terms on which he could purchase the claim; that he proposed to Montague that if he would find the money he would let him have half the speculation on the land; that he and Montague agreed upon the terms. Montague found the money with which to pay for it, and they were equally interested in the purchase; that he would not have given up to Montague one-half of it if he could have raised the money to pay for it with, but he could not; but Montague could. The said Dunbar showed me his farm and lands at Rockford, and those of Montague, which were near, and we went over portions of them. Some time after this, at Keene aforesaid, the said Dunbar told me we should make a handsome sum by our investment at Milwaukee; that he had traded with Montague for half his interest in the Milwaukee land, and had let him have his farm at Rockford, or a portion of it; that he now owned one-half the Milwaukee land, just what he did before he sold to Holman. At a later period I had another conversation with him in relation to the value of the land, the taxes, the improvement of the adjoining land, the canal, the water-power, and the future prospects of Milwaukee.

He always spoke of his half or his one-fourth of the said land in which we were interested together, and never at any time spoke of his having any greater interest in one portion of the land than in another.

Subsequently to the conversation above referred to, I conveyed to Joel Parker my undivided one-fourth of said lands first above mentioned, having previously received a deed of conveyance from the said Holman of the same to myself. Said land, I believe, lies in the city of Milwaukee, and State of Wisconsin.

The counsel for the pl'ff called John H. Tweedy, who, being sworn as a witness, testified that he knew the defendant, and knew that he claimed title to about 35 acres in the lots 1 and 6, in the quarter section in dispute; that he had laid it out and platted it, and offered it for sale; also, that he had purchased the interest of Charles J. Kane in the southwest forty acres of the quarter section.

Being cross-examined by the counsel for the defendant, witness stated that there was no one in actual occupation of the premises in dispute except squatters, and they are mostly and wholly on the southwest quarter of the quarter section.

It was then admitted, by the counsel for the defendant, in open court, and evidence thereof waived, that the defendant in this cause did, at the commencement of this suit, and still does, claim title in severalty to, and right of possession of thirty-five $\frac{55}{100}$ acres, being

the same described in the record introduced in evidence as set-off in partition to Charles J. Kane, in lots one and six of the northeast quarter of section twenty-one, and also five acres (the same being an undivided half of the 10 acres sold by the guardian) undivided in the southwest quarter of the said northeast quarter section.

The counsel for the plaintiff here rested his cause. Afterward, to wit, on the eleventh day of said month of September, eighteen hundred and fifty-seven, being the fifth day of said term of said court, the trial of the above entitled cause having been continued until this day, and being still in progress, the counsel for the defendant, to maintain and prove the said issue on his part, offered to read in evidence a deed dated August 8th, A. D. 1849, made by Peter Martineau, administrator of the estate of William E. Dunbar, deceased, to Charles J. Kane, under authority and pursuant to an order of the probate court of Milwaukee county, conveying "the undivided one-half part of lot number one (1), section number twenty-one, township number seven (7), range No. twenty-two (22) east, and of the south half of the northeast quarter of section No. twenty-one (21), township number seven (7), range twenty-two east, the same being situated, lying, and being in the city and county of Milwaukee and State of Wisconsin," which deed was duly acknowledged and recorded in Milwaukee county, in vol. 32 of deeds, at pages 223, &c., December 6th, 1850.

The counsel for the defendant then and there in open court admitted as evidence to the jury in this cause, that in the proceedings of the probate court of Milwaukee county in the matter of the estate of William E. Dunbar, under which the sale of the lands and the deed above described and introduced were made, no appointment was made of a guardian to represent said heirs in the proceedings for the sale of said real estate; the counsel for the plaintiff admitting the regularity of the proceedings in said administrator's sale, and of the probate court preliminary to such sale, in all other particulars.

The counsel for the defendant then, further to maintain and prove the issue on his part, produced and read in evidence to the jury the following deed, to wit:

This indenture, made the twenty-ninth day of December, in the year 1849, between Peter Martineau, guardian of George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, children of William E. Dunbar, now deceased, and Rebecca his wife, now Rebecca Shaw, and infants under the age of fourteen years, parties of the first part, and Charles J. Kane, of the city of Milwaukee, party of the second part: whereas a petition was heretofore presented to the circuit court of Milwaukee county, sitting as a court of chancery, in behalf of the above named infants, praying for a sale of their right, title and estate in the west half of the south half of the northeast quarter of section twenty-

one (21), in township seven (7) north, of range twenty-two (22) east in said city of Milwaukee, upon which petition an order of said court sitting as a court of chancery, was made, bearing date the fourteenth day of December, in the year 1849, appointing Peter Martineau above named the special guardian of such infants for the purpose of such petition; and whereas such proceedings were afterwards had on such petition, that at a special term of said court held at the city of Milwaukee, at the court-house in said city, on the 20th day of December, in the year last aforesaid, it was, among other things, in substance ordered and adjudged, that the above named Peter Martineau, the special guardian of such infants, be authorized and empowered to sell all the estate, right, title and interest of the above named infants, and each of them, in and to the premises hereinafter mentioned, that such sale be made at public auction or private sale, at the discretion of such guardian; and further, that such sale, with the name of the purchaser and the terms thereof, be reported, upon the oath of such guardian, to the said court before the conveyance of such premises was executed; and whereas the said Peter Martineau, special guardian aforesaid, did, in pursuance of said order, on the twenty-first day of December instant, enter into an agreement for the sale of the right, title, and interests of the said infant heirs in and to the said premises, to the party hereto of the second part, for the sum of six hundred and two dollars and fifty cents, at private sale, that being the highest sum offered for the same, and thereupon the said guardian made a report of such agreement for the sale of such premises to this court, under oath, pursuant to the requisitions of the said last recited order, upon which an order was made, bearing date the 28th day of December instant, by the said court, confirming such report and approving and confirming such sale, and directing the same to be carried into effect:

Now, therefore, the indenture witnesseth, that the said parties of the first part, by Peter Martineau, then special guardian as aforesaid, for and in consideration of the sum of six hundred and two dollars and fifty cents lawful money of the United States of America, to them in hand paid, at or before the executing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and conveyed, and by these presents do grant, bargain, sell, remise, release and convey, unto the said party of the second part, his heirs and assigns, all the undivided one-fourth part of the west half of the south half of the northeast quarter of section twenty-one (21) in township seven north, of range twenty-two (22) east, in the city of Milwaukee, and State of Wisconsin, and all of the right, title, interest, property, possession and claim of them the said parties hereto of the first part, infants as aforesaid, of, in, and to the same and every part and parcel thereof, with the appurtenan-

ces, to have and to hold the same and every part and parcel thereof, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their only proper use and behoof, and benefit forever.

In witness whereof, the said Peter Martineau, special guardian as aforesaid, has hereunto subscribed his name as special guardian of such infants, and has hereunto affixed his seal, the day and year first before written.

PETER MARTINEAU, [SEAL.]
Special Guardian to the heirs of
William E. Dunbar, dec'd.

In presence of—
THOMAS L. OGDEN,
JNO. H. HYMEN.

Which deed was duly executed, and acknowledged, and recorded in the proper office in Milwaukee county, Wisconsin, in vol. 32 of deeds, at pages 225 and 226, December 6th, 1850. The counsel for the plaintiff admitted the regularity of said last named deed, and of the proceedings of said court, for the conveyance of the interest of the infant heirs in the premises named. The counsel for the defendant, further to maintain and prove the issue in this cause on his part, introduced and read to the jury duly certified copies of deeds as follows, both of which deeds were duly recorded December 6th, 1850: a deed of Bela Shaw and Rebecca his wife, to Charles J. Kane, dated August 9th, 1849, duly executed and acknowledged, and recorded in the proper office in Milwaukee county, in vol. 32 of deeds, at page 220, conveying all their right, title, and interest in and to the following lots or parcels of land situate in the county of Milwaukee, and State of Wisconsin, to wit: lot No. one (1) and the south half of the northeast quarter of section No. twenty-one, township No. seven (7) north, of range No. twenty-two (22) east.

Also a deed by the same parties and to the same party, dated January 2d, 1850, duly executed, and acknowledged, and recorded in the proper office in Milwaukee county, in vol. 32 of deeds, at pages 221 and 222, conveying all that tract or parcel of land situated in the county of Milwaukee, and State of Wisconsin, and described as follows, to wit: the undivided one-fourth part of the west half of the south half of the northeast quarter of section twenty-one, township No. seven, range No. twenty-two.

The counsel for the defendant then, further to maintain and prove the issue on his part, produced and offered and read in evidence to the jury the record of proceedings in the circuit court for Milwaukee county, Wisconsin, in a certain cause lately there depending, as follows:

Pleas before the Honorable Levi Hubbell, judge of the second

judicial circuit, State of Wisconsin, and presiding judge of the circuit court, in and for the county of Milwaukee, in said State, at a term of said court begun and holden at the court-house in the city of Milwaukee, on the second Monday of February, A. D. 1851.

JOHN WHITE, Esq., *Sheriff.*
HENRY K. WHITE, *Clerk.*

JOEL PARKER
vs.
CHARLES J. KANE, JAMES S. BROWN, John H. Tweedy, Peter Martineau, George Dunbar, Mary A. Dunbar, Caroline E. Dunbar, Bela Shaw, Rebecca Shaw, Richard Montague and Carl Becman. } Bill.

Be it remembered, that heretofore, to wit, on the 10th day of January, A. D. 1851, comes the complainant by his solicitor, C. K. Wells, esq., and files his certain bill of complaint, in the words and figures following, to wit:

In Chancery.

STATE OF WISCONSIN.

To the Circuit Court for the county of Milwaukee.

Joel Parker, complainant in this suit, a citizen and resident of the State of Massachusetts, brings this his bill of complaint against Charles J. Kane, James S. Brown, John H. Tweedy, and Peter Martineau, of the city of Milwaukee, State of Wisconsin, and citizens of the State of Wisconsin, and George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, infant heirs and children of William E. Dunbar, deceased, Bela Shaw and Rebecca Shaw his wife, and Richard Montague, all citizens and residents of the State of Illinois, and Carl Becman, of St. Louis, State of Missouri, and an alien.

And thereupon your orator complaining shows unto said court, that heretofore, to wit, in the year 1835, said Richard Montague made an agreement with William E. Dunbar, then living, since deceased, by which, among other things, said Montague agreed to furnish money to said Dunbar with which to purchase all of the northeast quarter of section number twenty-one, in township No. seven north, of range No. twenty-two east, lying east of the Milwaukee river, in the Milwaukee land district, and now in the county of Milwaukee, State of Wisconsin; and said Montague and said William E Dunbar were to own such land together, as tenants in common, and said William E. Dunbar was to repay to said Montague one-half of the money by him to be advanced with which to purchase said land. That, in pursuance of such agreement, said Montague did advance and deliver to said William E.

Dunbar in his lifetime the money with which to purchase said land of the United States, and said William E., in his lifetime, purchased the said land of the United States, being now, and, for aught that your orator knows to the contrary, then enhanced in the following divisions, or rather described as follows, to wit: lots one and six in the northeast quarter of said section twenty-one, and the southwest quarter of said northeast quarter, all of which lie east of the Milwaukee river aforesaid.

That in the year 1836 said William E. Dunbar, in his lifetime, made and executed in due form of law and delivered to said Montague a deed of conveyance of an undivided one-half of all said land.

That afterwards, to wit, in the year 1837, said Montague sold to said William E. Dunbar in his lifetime one-fourth of all said land, being one-half of his said Montague's interest therein; and the deed aforesaid made by said Dunbar to said Montague not having been recorded, it was agreed by and between said William E. and said Montague that that deed should be delivered up to said William, and he should make to said Montague a deed of one-fourth of said land instead of said Montague retaining his deed of one-half of said land, and conveying back to said William E. one-fourth of the same; and in pursuance of such agreement said Montague did deliver to said William E. said deed for one-half of said land, and said William E. and his wife Rebecca conveyed by deed, in due form of law, executed and delivered, unto said Montague, what was then understood and intended by the said William E. and said Montague one-fourth part of all of said land, the description of which in such deed is in substance as follows: "One equal undivided fourth part of lots one and six, being that part of the northeast quarter of section twenty-one, township number seven north, of range 22 east, lying east of the Milwaukee river.

That in drawing such deed there was a mistake in not inserting therein, according to the agreement of the parties, and conveying also an undivided fourth part of the southwest quarter of said northeast quarter, which lies east of said Milwaukee river, and of an undivided one-fourth of said southwest quarter of said northeast quarter, did not pass by such last mentioned deed to said Montague, he had by virtue of said prior deed so delivered up as aforesaid the legal title thereto, and by virtue of such subsequent agreement the equitable title thereto, to wit, in December, 1837, when said last deed from said William E. and his wife to said Montague was made and delivered, and such deed was recorded in vol. E of deeds in the office of the register of deeds of said county of Milwaukee, in 1837 or 1838.

That on the 13th day of January, A. D. 1838, said Montague and his wife conveyed by warrantee deed, in due form of law executed and delivered, unto John P. Chapin, his heirs and assigns, an undi-

vided sixteenth of said lot one, and the south half of said northeast quarter of said section twenty-one, being all of said northeast quarter east of the Milwaukee river, which deed was duly recorded in the proper office immediately thereafter. That said Chapin, by deed in due form of law executed and delivered, bearing date the 18th day of May, 1841, conveyed unto your orator, his heirs or assigns, one undivided sixteenth of said lot one, and of the south half of the northeast quarter of said section twenty-one, which deed was recorded in the office of the register of deeds of said county of Milwaukee on the 27th day of May, 1841. That said Montague, by deed in due form of law executed and delivered, bearing date the 27th day of October, A. D. 1842, conveyed to Phineas Fiske, his heirs and assigns, a portion of said land described in the deed in substance as follows, to wit: "An undivided three-sixteenths of lots one and six, being that part of the northeast quarter of section twenty-one, township seven north, of range twenty-two east, lying east of the Milwaukee river.

That said Phineas Fiske purchased of said Montague an undivided three-sixteenths of all of said northeast quarter of section twenty-one lying east of the Milwaukee river, and it was understood by and between the said Phineas Fiske and said Montague at the time said deed was executed and delivered by said Montague to said Fiske, that such deed did convey an undivided three-sixteenths of all said northeast quarter lying east of the Milwaukee river; and if it does not, then there was a mistake in the description of said land in said deed. Said deed was recorded in the office of the register of deeds of the county of Milwaukee in the year 1842.

That one Phineas S. Fiske, one of the heirs of said Phineas Fiske, on the 30th day of May, 1848, sold and conveyed by deed to Thomas M Edwards, his heirs and assigns, an interest in said land in said deed described, as follows: an undivided fourth part of three undivided sixteenths of lot No. one and six, being that part of the northeast quarter of section twenty-one, in township No. seven north, of range twenty-two east, lying east of the Milwaukee river, and said Fiske agreed to convey, and intended by such deed to convey to said Edwards one-fourth of three-sixteenths of all that part of said quarter section which lies east of the Milwaukee river. That previous to the 30th day of May, 1848, said Phineas Fiske departed this life and left four children his sole heirs, to wit: Mary H. Edwards, wife of said Thomas M. Edwards; Julia A. Densmore, wife of William Densmore, and Francis S. Fiske and Phineas S. Fiske.

That on or about the 11th day of November, A. D. 1850, said Thomas M. Edwards and Mary H. Edwards his wife, in his and her right, said William Densmore and Julia Densmore his wife, in her right, and said Francis S. Fiske (said Mary Julia and Francis being children and heirs of said Phineas Fiske, deceased) sold

and conveyed unto your orator, by deed under their hands and seals, in due form of law executed and delivered, all their right, title, and interest, claim and demands of, in, and to three undivided sixteenth parts of the west half of the south half of the northeast quarter of section No. twenty-one aforesaid.

That your orator has the title, either legal or equitable, to one undivided fourth part of the west half of the south half of said northeast quarter of said sec. 21, under and by virtue of the conveyances aforesaid, and of the agreements hereinbefore set forth.

That said William E. Dunbar departed this life in the year 1846, leaving said George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, his infant children and sole heirs, and Rebecca Dunbar his widow, who has since intermarried with said Bela Shaw, who resides in the State of Illinois, and has taken out letters of administration in Illinois on the estate of said William E. Dunbar, deceased.

That said Martineau has been, as your orator is informed and believes, and charges, appointed by the circuit court for the county of Milwaukee special guardian of said infant heirs of said William E. Dunbar, deceased, and as such guardian has sold and conveyed, or pretended to sell and convey, all the interest of said infant heirs of said William E. Dunbar of, in, and to said land; that he has sold or pretended to sell a part of the whole of their interest at two several times; and at the last sale, sold and conveyed to said Charles J. Kane an undivided one-fourth part of the west half of the south half of the northeast quarter of said section twenty-one, being the precise undivided fourth of said last mentioned land which your orator claims by virtue of the conveyance and agreements herein mentioned.

That said Martineau, as such guardian, has, as your orator is informed, believes, and charges, sold as the property of said heirs, unto said Charles J. Kane, the same undivided one-fourth part of said southwest quarter of said northeast quarter of said section twenty-one, which your orator claims as his own; and the said Martineau, and those claiming under such sale, claim that no interest whatever ever passed from said William E. Dunbar to said Montague in the southwest quarter of the northeast quarter of said section, and that neither said Montague nor those claiming under him had any interest therein; whereas your orator charges the contrary.

That said Kane either purchased said land of such guardian in his name, for himself, said Tweedy, Brown and Becman, or has since conveyed some interest in the same to his co-defendants, Tweedy, Brown and Becman, either jointly or severally.

That said Martineau, before he made such sale as guardian, had notice and information that said Montague, and those claiming under him, claimed as their own an equal undivided one-fourth part of the southwest quarter of the northeast quarter of said section

1417

twenty-one, and had notice of, and knew that one-fourth part thereof belonged to and was either legally or equitably the property of your orator and those claiming under said Montague, and said Tweedy, Kane, and Brown and Becman had each, at the time they respectively purchased a part of or become interested in said land as aforesaid, notice, information, and knowledge of the claim, right, title, and interest of your orator, and those claiming under said Montague, in and to said premises last aforesaid.

That said Martineau has now a large sum of money, to wit, $400, in his hands, which he holds in his capacity of guardian for said infants, the same being the proceeds of the sale of the land sold by him as guardian, claimed by your orator.

That one-fourth of the southwest quarter of said northeast quarter of section No. twenty-one is worth the sum of $4,000.

That said John H. Tweedy, Kane and Brown, have commenced a suit in chancery for partition of said southwest quarter of said northeast quarter of said section No. twenty-one, against your orator and others.

Your orator being remediless at law, solicits the aid of this honorable court.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their sēveral and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as, by the note here under written, they are respectively required to answer—that is to say:

First. Whether said several deeds herein mentioned were made, and each of them, as herein specified.

Second. Whether you had information at the time of said guardian sale of the interest of this complainant, and of those claiming under said Montague, in the west half of the south half of the northeast quarter of said section 21.

Third. State whether you did not know at the time of such sale, or before, that said complainant and others claiming under said Montague claimed said land, paid the taxes thereon—that is, on one undivided fourth part thereof. State whether you had seen the records of any of said deeds hereinbefore mentioned before said guardian's sale; and if yea, which of said deeds.

Fourth. Whether you had conversed with the agent of the complainant before said guardian sale, and he had informed you that said complainant and those claiming under said Montague claimed an interest, to wit, one-fourth, or any other part of the southwest forty acres of said quarter section, or whether you received similar information from others.

Fifth. Have you, as guardian or administrator, made two sales

of the interest of said heirs of Dunbar in and to the west half of the south half of the northeast quarter of said section twenty-one; if yea, what interest did you first sell, and what interest did you sell at the last sale, and why did you not sell the whole interest at first? Was or was it not because you were informed that you did sell all their interest at the first sale, or was it because the title of said heirs to the interest last sold was doubtful, as you were informed, or was it because other persons claimed such interest as you sold at the last sale; and if so, who were the persons claiming the interest you last sold?

Sixth. State how much money you received for the lands sold by you as guardian as aforesaid, and how much of the proceeds is now in your hands?

An answer on oath is hereby waived as to all of the defendants to this bill, except John H. Tweedy and Peter Martineau, who are required to answer on oath.

And your orator prays that said Montague, and said George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, infant heirs of said William E. Dunbar, deceased, and said Bela Shaw, Rebecca Shaw, Carl Becman, James S. Brown, John H. Tweedy, and Charles J. Kane, may be compelled to convey unto your orator an undivided fourth part of said southwest quarter of the northeast quarter of said section twenty-one, by conveyance in due form of law, with apt and proper words; and if necessary, that the deeds of Dunbar to Montague, and Montague to Fiske, may be so corrected and altered as to be in accordance with the understanding, intention and agreement between the parties to said deeds respectively, at the time they were *expected*.

And in case the sale of said land by said Martineau as guardian, and his conveyance as guardian, passed a good and valid title to said land as against your orator and those claiming under said William E. Dunbar and said Montague, then your orator prays for a personal decree against said Martineau for the amount of the proceeds of such sale, also against the heirs of said William E. Dunbar, deceased, for all the moneys, proceeds of said land, which has come to their hands; that said partition suit be connected with this suit, and the two causes heard together.

And your orator further prays for all general and equitable relief in the premises.

May it please the court to grant unto your orator the writ of injunction, to be issued out of, and under the seal of this court in due form of law, directed to said defendants and each of them, their agents and attorney, therein and thereby enjoining and restraining them and each of them from selling, conveying, disposing of, or in any way incumbering the undivided fourth part of said southwest quarter of the northeast quarter of said section No. twenty-one, being the premises herein claimed by your orator, and

enjoining said Martineau from parting with the money in his hands, the proceeds of such sale as aforesaid.

May it also please the court to grant unto your orator the writ of subpœna to be issued out of, and under the seal of this court, in due form of law, directed to said Charles J. Kane, James S. Brown, John H. Tweedy, Peter Martineau, and George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, infant heirs of William E. Dunbar, deceased, Bela Shaw, Rebecca Shaw, Richard Montague, and Carl Becman, therein and thereby commanding them and each of them, &c.

And your orator will ever pray, &c.

JOEL PARKER.

CHARLES K. WELLS, *Complainant's Solicitor.*
J. DOWNER, *of Counsel.*

Said defendant, Martineau, is required to answer all the interrogatories in this bill, and the other defendants are required to answer the interrogatories herein, numbered respectively 1, 2, 3, 4.

H. K. WHITE, Esq.,

Please issue subpœna in this cause, returnable the first Monday in February, 1851.

CHARLES K. WELLS,
Complainant's Solicitor.

Same time subpœna issued, returnable the 1st Monday in Feb'ry, 1851. Subpœna returned January 18, 1851, endorsed as follows: "Personally served the within subpœna upon the within named Charles J. Kane, James S. Brown, John H. Tweedy, Peter Martineau, defendants, and gave them each a copy thereof; the other defendants not found in my bailiwick. January 11, A. D. 1851. Fees $2 32. John White, sheriff, per H. L. Page, under sheriff." Feb'ry 12, 1851, affidavit of the non-residence of defendants, George Dunbar, Mary A. Dunbar, Caroline E. Dunbar, Bela Shaw, Rebecca Shaw, Richard Montague, and Carl Becman, filed. Same day, it appearing to the court that a subpœna to answer has been issued in the above entitled cause, and that the same has been returned by the sheriff of Milwaukee county, with his return thereon in substance, "served on the said defendants, Kane, Brown, Tweedy, and Martineau, and the other defendants not found;" and it further appearing by affidavit, to the satisfaction of the court, that said George Dunbar, Mary A. Dunbar, Caroline E. Dunbar, Bela Shaw, Rebecca Shaw, Richard Montague, and Carl Becman are not residents of the State of Wisconsin, and are now absent from the same; therefore, on motion of Charles K. Wells, solicitor for the complainant, it is ordered by the court that said defendants appear and plead, answer or demurer to the said complainant's bill of complaint in this cause on or before the 15th day of May next, or in default thereof said bill will be taken as confessed, and the matters and

things therein decreed accordingly. And it is further ordered that a copy of this order be published once in each week for six successive weeks in some newspaper printed in said county of Milwaukee, commencing within twenty days after this date. Separate answer of defendant Carl Becman, by O. H. Waldo, his solicitor, filed May 12, 1851, as follows:

In Chancery.—Before the Circuit Court of Milwaukee county.

The separate answer of Carl Becman, one of the defendants, to the bill of complaint of Joel Parker, complainant.

This defendant, now and at all times saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as this defendant is advised it is material for him to make answer unto, he answers and says he admits that each and all of the deeds mentioned in said complainant's said bill of complaint, excepting the one by which said complainant alleges that William H. Dunbar conveyed to Richard Montague one-half undivided of all of that part of the northeast quarter of section twenty-one (21), town seven, of range twenty-two (22), which lies east of the Milwaukee river, were, in all material points, made, executed and recorded in manner and form, at times and by and between parties, except that the first deed from Martineau to Kane was given by him as administrator, and not as guardian, as they are in said bill stated to have been respectively; but this defendant denies that there is anything in said deeds thus made, executed, and recorded, or in any of them, as they have come to his knowledge, or in any other deed which is on record in said Milwaukee county, or which came in any manner to the knowledge of this defendant before the commencement of this suit, or otherwise than by said complainant's said bill of complaint, which shows a conveyance to Richard Montague of any part or portion of, or any interest in the west half of the south half of the northeast quarter of section 21, town 7, of range 22 east, in Milwaukee county, and mentioned in said bill of complaint. And this defendant further answering saith, that he had no information at the time of the guardian's sale mentioned in said complainant's said bill of complaint of any interest of said complainant, or of those claiming under said Montague, in the west half of the south half of section twenty-one aforesaid; that at the time of said guardian's sale he had not seen the records of any of the deeds mentioned in said complainant's said bill of complaint, and that he did not know, until he was informed by said bill in this suit, that said complainant and those claiming under said Montague claimed said land, or any part or portion thereof, or paid the taxes thereon. And this defendant says he had not conversed with any agent of said

complainant before said guardian's sale, nor had any such agent or any other person whomsoever informed this defendant that said complainant, or those claiming under said Montague, claims the one-fourth part, or any part whatever, of the southwest forty acres of said northeast quarter of said section 21. And this defendant further answering says, that on or about the twelfth day of October, 1849, he purchased of Charles J. Kane, John H. Tweedy, and James S. Brown a certain part or portion of said northeast quarter of said section 21, equal to one-eighth of all of that part of said quarter section which lies east of the Milwaukee river; and thereupon said Kane and his wife, said Tweedy and his wife, and said Brown, joined in a warranty deed in the usual form, duly executed and acknowledged and delivered, on or about the twelfth day of October, in the year of our Lord 1849, and therein and thereby, for a good and valuable consideration which was paid to them by this defendant, sold and conveyed unto this defendant said one-eighth of said northeast quarter, which was described in said last mentioned deed in substance as follows, to wit: the undivided one-fourth part of the undivided one-half part of lot No. one, in the northeast quarter of section twenty-one, of town seven north, of range twenty-two east; also the undivided one-fourth part of the undivided one-half of the south half of the northeast quarter of section twenty-one, of town seven, of range twenty-two east; which deed was recorded January 26, 1850, at the office of the register of deeds, in vol. 28 of deeds, at page 504.

That afterwards, to wit, on or about the nineteenth day of April, A. D. 1850, this defendant, together with John H. Tweedy and James S. Brown, purchased for their mutual and equal benefit and interest, from said Charles J. Kane, another portion of the southwest quarter of said northeast quarter of said section 21; and that thereupon said Kane and Lucy E. Kane, his wife, joined in a deed in due form executed, acknowledged and delivered according to law, and therein and thereby, for a good and valuable consideration which was paid to him (said Kane) by this defendant, sold and conveyed to this defendant an interest equal to one-fourth of one-fourth, or two and one-half acres of said southwest quarter of said northeast quarter, as will more fully appear by a reference to the description in said deed last mentioned, by Charles J. Kane and wife to said Tweedy, Brown, and this defendant, which is in substance as follows, to wit: the equal undivided three-fourths of the undivided one-fourth of the west half of the south half of the northeast quarter of section No. 21, of town No. 7, of range No. 22 east. Said last mentioned deed was recorded in vol. 29 of deeds, at page 495, April 22, A. D. 1850. And that afterwards, again, this defendant purchased of said Charles J. Kane still another portion of said southwest quarter of said northeast quarter; and that thereupon said Charles J. Kane and Lucy E., his

wife, joined in another deed in due form, executed, acknowledged and delivered according to law, and therein and thereby, for a good and valuable consideration which this defendant paid, conveyed to this defendant another portion of said southwest quarter of said northeast quarter, according to the description in the deed last mentioned, which is in substance as follows, to wit: One equal undivided ten acres in the southwest quarter of the northeast quarter of section No. twenty-one, town seven of range twenty-two east, which last deed is recorded in vol. 31, at proper office, at page 375. And that thus, by virtue of the three last mentioned deeds, and by operation of law, this defendant became, as he is advised and verily believes, justly and lawfully seized in fee simple of an equal undivided seventeen and one-half acres in said southwest quarter of the northeast quarter of said section twenty-one (21.) And this defendant further answering says, that at the time when he made the three several purchases of land as aforesaid, the first from said Kane, Tweedy and Brown, the second in company with said Tweedy and Brown from said Kane alone, and the third from said Kane alone, for himself alone, the said Kane and Tweedy, and especially the said James S. Brown, who is an attorney and counsellor at law, in whom this defendant had great confidence, and who represented himself to be very familiar with the title of said tract, all assured him, the said defendant, that by the three deeds last above mentioned, and by the purchasers by these deeds represented or interested, he acquired a perfect and unquestionable title to the several interests in, or portions of land purporting to be conveyed in and by such deeds.

And this defendant says he had not at the time he made the three several purchases as aforesaid, or at any time until after the filing of said complainant's said bill of complaint in this suit, any knowledge or information of any kind, or from any source, of any of the circumstances enumerated in said complainant's said bill, or of any other facts or circumstances tending to show the existence of any right, title or interest, either in law or in equity, in said complainant, or those claiming under said Montague, in or to any part or portion of said southwest quarter of said northeast quarter of said section 21. And this defendant for himself denies all unlawful combination and confederacy in said bill charged, without that any other matter or thing material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge and belief of this defendant. All which matters and things this defendant is ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained. CARL BECMAN.

O. H. WALDO, *Sol. for Def't.*

JOSEPH ODY, *of Counsel.*

STATE OF MISSOURI, *County of Clark, ss.*

On this twenty-ninth day of April, A. D. 1851, personally appeared before me the above named Carl Becman, and made oath that he had read the above answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be upon his information or belief, and as to those matters he believes it to be true.

A. G. SLAUGHTER, *J. P.*

STATE OF MISSOURI, *County of Clark, ss.*

I, John P. Hampton, clerk of the county court within and for said county of Clark, hereby certify that A. G. Slaughter, whose name appears to the above certificate, is at this time, and was at the date of said certificate, an acting justice of the peace and for said county of Clark, duly commissioned and sworn.

In witness whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court at my office in Alexandria, this 29th April, 1851.

JOHN P. HAMPTON, *Clerk.*

Separate answer of said defendant, John H. Tweedy, filed May 20, 1851, as follows:

Circuit Court for Milwaukee county.—In Chancery.

The several answer of John H. Tweedy, one of the defendants, to the bill of complaint of Joel Parker, against said Tweedy, Charles J. Kane, James S. Brown, Carl Becman, Bela Shaw, Rebecca Shaw, George Dunbar, Mary Dunbar, and Caroline Dunbar, infant heirs of William E. Dunbar, deceased, Richard Montague, and Peter Martineau, administrator of the estate of said William E. Dunbar, deceased.

This defendant, reserving all benefit of exception to the errors and imperfections contained in said bill, answering thereto, admits that said William E. Dunbar bought of the United States lots 1 and 6 and southwest quarter of the northwest quarter of section 21, township 7, range 22, in said county of Milwaukee, in 1835; also that said Dunbar, deceased, in 1846, leaving said George, Mary and Caroline his children and sole heirs, and said Rebecca his widow, who afterwards intermarried with said Bela Shaw, who with her and her said children now reside in Illinois; also that letters of administration on the estate of said Dunbar were taken out from the probate office in said county of Milwaukee by said Peter Martineau; also that said administrator, under the authority of said court of probate, did advertise for sale and thereafter sell to said Charles J. Kane one-half of the said premises at public auction, and did execute a deed thereof to said Kane.

And this defendant admits that he and said James S. Brown

were interested in said purchase equally with said Kane, and did furnish each one-third of the purchase money, and did receive from said Kane conveyances of their respective shares, and own the same as tenants in common.

And defendant saith, that afterwards, defendant, said Brown, and said Kane, did sell and convey to said Carl Becman one eighth part of said premises, and severally received payment for the amount and value of the interests conveyed by them; and defendant admits that afterwards said Peter Martineau sold and conveyed one-fourth part of said southwest quarter of said northeast quarter to said Charles J. Kane, and did execute a deed thereof to said Kane; but defendant saith that said sale was made and deed executed by said Martineau, not as administrator of the estate of said Dunbar, deceased, but as special guardian of said infant George, Mary and Caroline, under and by virtue of the order and decree of the circuit court for the said county of Milwaukee, sitting as a court of chancery, and defendant saith that said sale and conveyance was confirmed by said court, as by the records thereof will fully appear, and to which this defendant begs to refer and make part of his answer. And defendant further saith, that at or about the same time said Bela Shaw and Rebecca his wife did, for valuable consideration therein named, release and quitclaim to said Kane the right and claim of dower of said Rebecca in and to said premises, by deed duly executed, acknowledged and recorded, to which deed, ready in court to be produced, this defendant begs leave to refer and make part of this answer.

And defendant admits that said James Brown, Carl Becman, and himself were interested in said purchase equally with said Kane, and furnished equal shares of the purchase money; and this defendant saith that he still owns one equal fourth part of the interest purchased by said Kane, as tenant in common, and has received from said Kane a conveyance thereof duly executed, acknowledged and recorded, which he begs leave to produce and refer to as part of his answer.

And defendant further answering saith, that he purchased his said interest in said premises believing the same to have been the property of the estate of the said Dunbar, deceased, and paid a full and valuable consideration, to wit, about the sum of sixty dollars per acre. That before the purchase he examined into the title of said premises, and for that purpose applied to Thomas L. Ogden, esq., counsellor at law, at Milwaukee, who read to this defendant an abstract of the records of the several conveyances affecting the title of the estate of said Dunbar, deceased, to said premises. That said Ogden informed defendant that the title of three-fourths of the said southwest quarter of said northeast quarter of said section 21 was, as appeared by the records, in the said Dunbar at his decease. Defendant thinks that about the same time he himself examined the re-

cords of the register of deeds, in order to satisfy himself as to the title and quantity of land in said premises belonging to the estate of said Dunbar; that he cannot recollect how far his examination extended, nor whether he did or did not examine the records of the several conveyances recited in said bill of complaint under which complainant and others claim title to the premises in dispute; but defendant thinks that he read the record of the deed from Dunbar to one Richard Montague, mentioned in said bill, and that he noticed the description in the deed. Defendant has some recollection that Mr. Ogden called his attention to the language of that description, with the remark that he had once made an abstract of the title of the said premises originally entered by Dunbar for Mr. Crocker and Mr. Hathaway, who represented some of the owners; that the abstract showed a less interest in those claiming under Montague than he or they suppose them to be entitled to, and that Mr. Hathaway suggested that there might be a mistake in the description of the deed of Dunbar to Montague.

And this defendant saith, that at the time he became interested in the premises in dispute he had no other notice, information or knowledge, as to the legal or equitable title or claim of the complainant and others claiming under Montague than as herein above stated; that he knew nothing of the several deeds set forth in complainant's bill, under which complainant and others claim, save such knowledge as he derived from Mr. Ogden's abstract and a hasty examination of the records.

That from such examination he satisfied himself that the title of three-fourths of the said southwest quarter of the northeast quarter of said section 21 was in said Dunbar at his decease. That previous to his purchase of his interest in said premises, he made particular inquiry of one Mr. Marsh, the attorney and agent of the said Rebecca Shaw and Bela Shaw, whether there was any mistake in the description in the said deed from Dunbar to said Montague, and whether any person claiming under Montague had any valid equitable claim to the premises in dispute in this cause; that said Marsh assured defendant to the contrary, and that the title in Dunbar's heirs was perfect.

Defendant further saith, that on the 28th day of October, 1848, the said three-fourths of said southwest quarter of said northeast quarter of said section 21, and also the half of said lots one and six, were sold on execution as the property of said Dunbar, and that such sale was known to the agent of said complainant and others claiming under said Montague, and that neither said complainant nor any others claiming under said Montague, nor their agent, nor any person to the knowledge or information of this defendant, had taken any steps to prevent or forbid the sale under said execution, or the said sale by the said Martineau as special guardian of said infants, nor to forbid or prevent the payment of the purchase

money for said premises; neither have they commenced any suit or proceedings to establish their claim or title to the premises in dispute, until the filing of said bill of complaint. That this defendant, some time after the purchase of the interest of the heirs of said Dunbar, had several conversations with said Joshua Hathaway, representing himself to be the agent of persons claiming under Montague; and although said Hathaway stated reasons for supposing *their* had been a mistake in the description contained in said deed of Dunbar to Montague, he never, when particularly inquired of by this defendant, communicated to this defendant any of the facts set forth in said bill of complaint as to the original agreement between said Dunbar and Montague, the advance of the purchase money, the first conveyance, the destruction thereof, the subsequent agreement, and the mistake in the second deed, which was recorded; and this defendant believes, from said conversation with said Hathaway, and a subsequent conversation held by him with the complainant, whom he met for the first time at Milwaukee, that the facts set forth in said bill concerning the nature of the transactions between said Dunbar and Montague were never communicated to said Hathaway or to complainant, or to any persons representing at Milwaukee the complainant and others claiming under said Montague.

And this defendant further saith, that except as herein before set forth, he had not at the time of the said purchase of the premises in dispute, any notice or information as to the claim of said complainants and others, to his recollection and belief, but defendant admits that it is not improbable that he may have had conversations on the subject which have escaped his recollection. And the defendant insists that the purchase made as herein before stated by said Kane, of the premises in dispute, was bona fide and lawful, and that said Kane by virtue of said conveyance made by said Martineau, as special guardian of said infants, became lawfully seized of said premises, and that this defendant, by virtue of said conveyance to him from said Kane, has become the lawful owner of one-fourth of said premises. And this defendant submits that his purchase of his interest in said premises was made without any knowledge or notice of any claim in complainant or others, sufficient to put him on inquiry or raise a reasonable suspicion. That his examination of the title and inquiry of the counsel of Bela and Rebecca Shaw and their children, was sufficient to remove such suspicion. That the silence of complainant and others for so long a time, their neglect to assert their claim after information of the execution, sale of the premises, and of the defect of the legal title, or to furnish any evidence, information or notice of the facts upon which their pretended claim is grounded, were sufficient to discredit the claim in the mind of a provident man, and ought in equity to bar them from maintaining the same against this defendant.

JOHN H. TWEEDY.

STATE OF WISCONSIN,
Milwaukee county, ss.

John H. Tweedy on oath saith, that he hath read the foregoing answer, and knows the contents thereof, and the matters stated therein on his own knowledge are true, and those stated on his information and belief he believes to be true.

JOHN H. TWEEDY.

Subscribed and sworn to this 3d day of Feb'y, A. D. 1851.

JOHN B. EDWARDS,
Notary Public.

Separate answer of defendant, Peter Martineau, filed May 21, 1851, as follows:

Circuit Court, Milwaukee county.—In Chancery.

The separate answer of Peter Martineau, one of the defendants, to the bill of complaint of Joel Parker, complainant.

This defendant, saving and reserving to himself all benefit of exception to the many errors and imperfections contained in the said bill, for answer thereunto saith:

That this defendant was duly appointed administrator of the estate of Wil. E. Dunbar, deceased, by letters of administration under the seal of the probate court for the county of Milwaukee, bearing date on the thirteenth day of February, A. D. 1849.

And this defendant further states, that the said estate being indebted to a large amount, he was duly authorized by the probate court, there being no personal property to pay the debts, to sell the real estate of the said deceased; and that under and in pursuance of the said authority this defendant, after advertising the same as required by the statute and by the order of sale, sold to Charles J. Kane an undivided one-half of lots one and six, and the southwest quarter of the northeast quarter of section twenty-one (21), being sixty-four $\frac{5}{8}$ acres, at sixty $\frac{25}{100}$ dollars the acre, and out of the purchase money of which was to be paid the redemption money on an outstanding sheriff's certificate and a mortgage on the said premises, and the balance of the purchase money, after paying off various tax incumbrances on the property, this defendant holds for the purpose of paying debts against the estate. The said sale took place on the eighth day of August, A. D. 1849.

And this defendant further states, that afterwards, and under the direction of the circuit court sitting as a court of chancery, and as special guardian appointed by the said court for the infant heirs of the said William E. Dunbar, and on or about the twenty-ninth day of December, A. D. 1849, this defendant sold an undivided ten acres of the said premises, being the interest, as this defendant supposed, of the heirs in the said premises, to the said Charles J. Kane, for the sum of six hundred and two $\frac{50}{100}$ dollars.

And this defendant further answering says, that he knows nothing of the said several deeds mentioned in the said complainant's bill of complaint, saving what he has read in the said bill.

2d. That he had no information, at the time of the said guardian's sale, of any interest of the said complainant, or of those claiming under the said Montague, in the west half of the south half of the northeast quarter of the said section twenty-one.

3d. That neither at the time of said sale nor before did this defendant know that the said complainant and others, claiming under the said Montague, claimed the said land, nor that they paid the taxes thereon, or on any part thereof, nor has this defendant to his knowledge ever seen any of the said deeds mentioned in the complainant's bill, nor the records thereof.

4th. That this defendant has no recollection of any conversation with the agent of the complainant before the said guardian's sale in reference to any interest claimed by the said complainant, or those claiming under the said Montague, and that this defendant, to the best of his recollection and belief, never knew, until informed by complainant's bill, that complainant, or those claiming under the said Montague, claimed any interest in the southwest forty acres of the said quarter section.

5th. And this defendant further states, that at the first sale this defendant, as administrator, sold what was deemed sufficient to pay the debts owing by the said estate, and for nothing else, and that at that time it was not suggested that the heirs would make any application to sell their interest in the remainder; and this defendant does not know whether the probate court could have authorized him to sell at one time all the real estate for the two purposes. That subsequently, as special guardian for the infants as aforesaid, and under the order of the circuit court, and for the purpose of providing necessaries for the infants, this defendant sold their interest, the same being an undivided ten acres, in the southwest quarter of the said quarter section; that this defendant was never informed that he had sold all the interest of the infants at the said first sale, nor that the title of the infants to the piece last sold was doubtful, nor was defendant informed, except by said complainant's bill, that other persons claimed such interest.

6th. That this defendant has received in cash from the said guardian sale herein before mentioned, the sum of six hundred and two dollars and fifty cents, of which he has now in his possession about the sum of two hundred dollars. All which matters and things this defendant is ready to aver, prove, and maintain as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

PETER MARTINEAU.

BROWN & OGDEN,
Sol. and of Counsel.

STATE OF WISCONSIN,
County of Milwaukee, ss.

Peter Martineau on oath says, that he has read the foregoing answer subscribed by him, and knows the contents thereof, and that the same is true as to the matters therein stated of his own knowledge, and as to those matters stated on information and belief he believes it to be true.

Sworn to before me this 16th day of May, A. D. 1851.
DAVID B. OGDEN,
Not. Pub. Resid. in Mil. City.

May 24th, 1851. Separate answer of defendant, Richard Montague, filed as follows:

Circuit Court for the county of Milwaukee.

JOEL PARKER
vs.
CHARLES J. KANE, JAMES S. BROWN, John H. Tweedy, Peter Martineau, George Dunbar, Mary A. Dunbar, Caroline E. Dunbar, Bela Shaw, Rebecca Shaw, Richard Montague and Carl Becman.

Richard Montague, a defendant in this case, answers and says, that in 1835 he was in Chicago with said William E. Dunbar, and bought of him one undivided half of a claim to a lot of land lying east of the Milwaukee river, in the Territory of Wisconsin, and adjoining the falls on said river, near its mouth, which land said Dunbar was then proposing to purchase of the United States, and which this defendant had never seen, but was induced to join with said Dunbar in the purchase from his representation of its value.

The agreement between said Dunbar and this defendant was, that this defendant should advance the money to make the purchase of the said land from the government; that said Dunbar was to give his note to this defendant for one-half of said purchase money advanced as aforesaid; that Dunbar was to attend to purchasing the land; that he and this defendant were to be equal owners, and that this defendant should pay said Dunbar for the one-half of his claim to the land the sum of fifty dollars, which he, this defendant, did at that time on the spot.

This defendant soon after returned to New Hampshire, and remitted to said Dunbar the amount of money required to purchase the whole tract from government, and he purchased or entered the land, as this defendant understood; and they thereupon became equal owners of it, according to the contract or agreement above mentioned. On the return of this defendant to Illinois in the year

1836, said Dunbar gave him a deed of one undivided half of all of said tract of land so purchased from government, as said Dunbar said and this defendant understood, but the particular description of the land in said deed this defendant cannot now state, said deed never having been recorded, and having been subsequently given up to said Dunbar as hereinafter mentioned. Having confidence in said Dunbar, he trusted to him to execute a correct conveyance. By that contract he was to have an undivided half of the purchase made by Dunbar at that place, and he understood the deed conveyed one undivided half of the whole land Dunbar purchased there.

And this defendant further says, that in the summer of 1836, after receiving said deed, this defendant agreed with John P. Chapin, of Chicago, to sell to him one-fourth of this defendant's interest in said land, and gave him a bond for a deed upon the payment of the money agreed to be paid by said Chapin, which bond is now in the possession of this defendant, and this defendant believes that the description of the land in the bond was copied from the deed of said Dunbar to him.

And this defendant further says, that after the deed from Dunbar to this defendant, and, as he believes, in the year 1837, he bought of said Dunbar a claim, adjoining a farm of this defendant's on Rock river, in Illinois, for which it was agreed that this defendant should give said Dunbar one-fourth of this land in Milwaukee; and as the deed from said Dunbar, which this defendant held, had never been recorded, it was agreed that it should be destroyed, and that said Dunbar should give this defendant, instead, a deed for one-fourth of all of said tract of land in Milwaukee purchased from government as aforesaid, which this defendant then, and until after the death of said Dunbar, supposed was done.

And this defendant says that said Dunbar drew this deed himself; and he distinctly recollects saying to said Dunbar, when he received it, that the description was not the same as that contained in the first deed; to which said Dunbar answered, that the land had been divided and numbered, and that the description he had given in the deed was correct; and as this defendant had no means of knowing that it was not so, he received it, with the clear understanding, from said Dunbar's remarks and conversation, that it conveyed one undivided fourth of the whole quarter section or tract of land so entered by said Dunbar.

And this defendant further says, that said Chapin having failed to fulfil the conditions of said bond, an agreement was made by which this defendant agreed to take back one-half of the quantity of land agreed to be conveyed by said bond, or release said Chapin from his agreement to purchase so much; and this defendant, as he believes, in 1838 gave said Chapin a deed of one-eighth of this defendant's undivided interest in the aforesaid quarter section of land, or one-sixteenth of the whole tract of land as aforesaid, in which

deed the land was described, as this defendant understood and believes, according to his title, the description being according to that contained in his bond to said Chapin.

And this defendant further says, that afterwards, being indebted to Phineas Fisk, of Keene, in New Hampshire, he in the first place mortgaged to him the remaining three-sixteenths of said land in 1840, and subsequently, in 1842, conveyed the same to him, intending to convey to him all the remaining interest of this defendant to said land so purchased by said Dunbar, and supposing that he had done so. And this defendant believes that the description in said deeds was taken from the last deed of Dunbar to him.

And this defendant further says, that after the last deed by said Dunbar to him, he at different times had conversations with Dunbar about the land, in which Dunbar spoke of his undivided interest in said tract or quarter section of land, and the said Dunbar never claimed a greater interest in one portion or part of said quarter section of land than in any other portion or part of the same, to his knowledge.

And this defendant further says, that he had no suspicion that all was not right until after Dunbar's death, and he thinks in or about the summer of 1849, when Mr. Jason Marsh, a lawyer of Rockford, Illinois, who, as he understood, was employed by some of those interested in Dunbar's estate to investigate his affairs, informed this defendant of the error, and stated to this defendant that he believed it was an error, and said that he had talked with Mrs. Shaw, she that was Mrs. Dunbar, and she thought it was an error. And thereupon this defendant went to Mr. Bela Shaw, the present husband of Mrs. Dunbar, and talked with him on the subject; that this defendant was satisfied that said Shaw meant to be very guarded in what he said, but he assured this defendant that he had and should reserve said land in dispute from sale; but that it had become necessary to sell what interest Dunbar's heirs had in said land, and had accordingly directed that the balance of the land should be sold for the benefit of said heirs. And this defendant had supposed that the land in question had been reserved from sale, as said Shaw had promised it should be, until he received information to the contrary from the plaintiff, in May or June, 1850.

And this defendant, on the application of the plaintiff, has released and conveyed to him all right, title, claim and demand in and to said land in controversy, and hereby releases to him all claim and demand to the same.

And this defendant admits the several deeds to have been made as specified in the plaintiff's bill.

RICHARD MONTAGUE.

May 29, 1851. Replications of complainant to the several answers of the defendants, Carl Becman, Peter Martineau, and John H. Tweedy, filed, and issue joined as to them, as follows:

In the Circuit Court for the county of Milwaukee and State of Wisconsin.

JOEL PARKER vs. CHARLES J. KANE et als. } In Chancery.

The replication of Joel Parker, complainant, to the separate answer of Carl Becman, one of the defendants, to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by his said bill he has already prayed.

WELLS & DOWNER,
Solicitors for Complainant.

In the Circuit Court for the county of Milwaukee and State of Wisconsin.

JOEL PARKER vs. CHARLES J. KANE et al. } In Chancery.

The replication of Joel Parker, complainant, to the separate answer of Peter Martineau, one of the defendants, to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and

prove as this honorable court shall direct, and humbly pray, as in and by his said bill he has already prayed.

WELLS & DOWNER,
Solicitors for Complainant.

In the Circuit Court *of or* the county of Milwaukee and State of Wisconsin.

JOEL PARKER
vs.
CHARLES J. KANE and others. } In Chancery.

The replication of Joel Parker, complainant, to the separate answer of John H. Tweedy, one of the defendants, to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifest insufficiencies of the said answer, for replication thereto say, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray, as in and by his said bill he has already prayed.

WELLS & DOWNER,
Solicitors for Complainant.

Proof of publication filed May 30, 1851. Same day, to wit, May 30, 1851, it appearing to the court that the time limited by order of this court for the defendants in this cause to appear, plead, answer or demur to the complainant's bill of complaint has expired, and that said order has been duly published as therein directed, and that none of the defendants (except Tweedy, Becman, Montague and Martineau) have appeared and answered, it is thereupon, on motion of Downer & Wells, solicitors for said complainant, ordered by the court that said bill be and the same hereby is taken as confessed as to the defendants, Charles J. Kane, James S. Brown, Bela Shaw, and Rebecca Shaw. And it is further ordered, that John H. Van Dyke be and he hereby is appointed guardian ad litem to defend this cause for the said infant defendants, George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, (he having consented in writing to be appointed such guardian.) And it is further ordered, on motion said complainant's solicitor, that the complainant have leave, and he hereby is authorized, to take the deposition of the defendant, Richard Montague, in pursuance of the rules and

practice of this court, to be read in evidence at the hearing of this cause, subject to all legal exceptions taken at the hearing.

May 30, 1851. By the court, &c.

I, John H. Van Dyke, do hereby consent to be appointed guardian ad litem for the infant defendants in the foregoing suit, to wit: George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar.

(Signed) JOHN H. VAN DYKE.

June 7, 1851. Answer of the infant defendants, by their guardian, filed as follows:

In Circuit Court for the county of Milwaukee, State of Wisconsin.

JOEL PARKER
vs.
CHARLES J. KANE, JOHN H. TWEEDY and others. } In Chancery.

The answer of George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, infants, under the age of twenty-one years, by John H. Van Dyke, their guardian ad litem—three of the defendants—to the original bill of complaint of Joel Parker against them and others, in the circuit court for Milwaukee county, State of Wisconsin.

These defendants, answering by the said guardian, say, that they are strangers to all and singular the matters and things in said bill contained, and that they are infants under the age of twenty-one years, and claim such interest in the premises mentioned in said bill as they are entitled to, and submit their interests to the protection of this honorable court.

JOHN H. VAN DYKE,
Guardian ad litem.

June 11, 1851, continued rule and interrogatories for commission to take testimony of Richard Montague and Milton Kilburn, of Rockford, Illinois. July 18, 1851, commission issued. July 5, 1851, rule and int. for commission to take testimony of Benjamin F. Adams, of Keene, New Hampshire, filed. July 18, 1851, commission issued, directed to Wm. P. Wheeler, of Keene aforesaid. Oct. 4, 1851. By consent, the decree pro. con. heretofore entered in this cause is opened as to said defendants, Chas. J. Kane and Jas. S. Brown; said defendants to file their answer within ten days from this date, and all proofs now taken in this cause to be considered applicable to any defence set up by said defendants, Charles J. Kane and James S. Brown, in their said answers to be filed. Same day, on motion of J. Downer, solicitor for complainant, it is ordered by the court that the time to take testimony in this cause be extended till the first Monday of January next, either party to take testimony on notice to the other party, and testimony to be then closed. Same day, continued.

Oct. 10, 1851, came the said parties by their solicitors, and by consent the complainant has leave to file an amended bill in this cause without prejudice to any of the parties, or to any of the testimony taken in said cause. Amended bill filed Oct. 10, 1851, as follows:

In the Circuit Court of the county of Milwaukee, and State of Wisconsin.

JOEL PARKER
vs.
CHARLES J. KANE, JAMES S. BROWN, John H. Tweedy, Peter Martineau, George Dunbar, Mary A. Dunbar, Caroline E. Dunbar, Bela Shaw, Rebecca Shaw, Richard Montague and Carl Becman. } In Chancery.

And now comes Joel Parker, the complainant in this cause, by Wells & Downer, his solicitors, and by leave of court first had and obtained, makes the following amendment to his original bill on file in this cause:

Said complainant states that said Martineau, at the commencement of this suit, had in his hands, as administrator of said William E. Dunbar, deceased, demands to a large amount due him in his character of administrator, and given for the sale and conveyance by him as administrator of said William E. Dunbar, deceased, of the interest which said Dunbar died seized of in said quarter section of land mentioned in said original bill, other than that portion of said land which is in dispute in this suit, and that said Martineau also had money in his hands belonging to the estate of said William E. Dunbar, deceased, or his heirs, to the amount of six hundred dollars, or thereabouts.

That said Martineau has now in his hands, as administrator, money which in fact belongs to his co-defendants, George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, as heirs of said William E. Dunbar, deceased, to the amount of five hundred dollars.

To the end, therefore, that the said defendant, Peter Martineau, may, if he can, show why your orator should not have the relief hereby prayed, and may, upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to each of the several interrogatories hereinafter mentioned and set forth, as by note hereunder written he is required to answer—that is to say:

1st. Whether you had at the commencement of this suit, in your hands, as administrator of William E. Dunbar, deceased, demands due you in your character of administrator, and given for the sale and conveyance by you, as administrator, of the interest which said William E. Dunbar died seized of in certain land as hereinbefore mentioned and set forth; and if so, what amount?

2d. Whether you had in your hands money belonging to the estate of William E. Dunbar, deceased, or his heirs, at the commencement of this suit, or at any time subsequent thereto; and if so, what amount and on what account was the same received by you?

3d. Whether you have in your hands, as administrator, money which belongs to your co-defendants, George Dunbar, Mary A. Dunbar, and Caroline E. Dunbar, as heirs of said William E. Dunbar, deceased; and if so, what amount?

And your orator prays that in case, at the hearing, it shall not be agreeable to the principles of equity to decree a conveyance to your orator from said defendants of the land claimed by him in his original bill, that said Martineau may be decreed to pay to your orator the amount for which said land in dispute was sold by him, out of any money in his hands belonging to the heirs of said William E. Dunbar, deceased, or to his estate; and your orator prays for all general and equitable relief, and is in said original bill.

May it please the court to grant unto your orator the writ of subpœna to be issued out of and under the seal of this court in due form of law, directed to the said Peter Martineau, therein and thereby commanding him, on a certain day and under a certain penalty, to be and appear in this court before the judge thereof, then and there to answer this amended bill of complaint, and to stand to and abide by such order and decree in the premises as shall seem meet and agreeable to equity and good conscience.

JOEL PARKER,
By C. K. WELLS.

CHARLES K. WELLS, *Sol'r for Complainant.*
J. DOWNER, *of Counsel.*

Said Peter Martineau is required to answer all the interrogatories in this amended bill.

H. K. WHITE, *Clerk, &c.*

Please issue a subpœna in this cause, returnable on the first Monday in November, 1851.

CHARLES K. WELLS, *Sol'r for Comp't.*

Subpœna issued Oct. 21, 1851, returnable first Monday in November next.

Separate answer of defendant, James S. Brown, filed October 24, 1851, as follows:

Circuit Court of Milwaukee county.

JOEL PARKER
vs. } In Chancery.
CHARLES J. KANE et al.

The separate answer of James S. Brown, one of the defendants, to the bill of complaint of Joel Parker, complainant.

This defendant, reserving to himself all benefit, &c., answering saith, that at the time of the filing of said bill of complaint of the said complainant, he (this defendant) was not interested in the said premises described in the said complainant's bill, to wit: in the west half of the south half of the northeast quarter of section No. twenty-one, in township No. seven north, of range No. twenty-two east, nor had this defendant at the time any legal or equitable title to the same, having before that time released all interest in said premises to the said Charles J. Kane, from whom this defendant had procured the same, nor has this defendant now any interest, right or title, in or to said premises.

This defendant therefore prays that he may be dismissed hence, with his costs of suit in this behalf wrongfully sustained.

JAMES S. BROWN.

THOS. L. OGDEN, *Sol.*

Alias subpœna returned Oct. 24, 1851, endorsed as follows: I return this subpœna served on Peter Martineau, by giving him a true copy, James S. Brown the same, and leaving a copy at the dwelling-house of John H. Tweedy, with a person of suitable age, to whom I explained the contents; the other defendants, after diligent search, could not be found in my bailiwick, this 21st day of October, 1851. Fees $2 98. John White, sheriff. Testimony filed March 3, 1852.

March 15, 1852, continued.

June 12, 1852, continued.

Special term, August 10, 1852, stipulations filed. Same day, on motion of Downer & Wells, solicitors for complainant, it is ordered, that the following deeds be filed in testimony, viz: Deed from John P. Chapin to Joel Parker, and from Charles Stratton to Joel Parker. Deed from Thomas M. Edwards and wife, William Dinsmoore and wife, to Joel Parker. Deed from Thomas M. Edwards and wife, William Dinsmoor and wife, and Francis S. Fisk, to Joel Parker. Deed from Benjamin F. Adams to Joel Parker. Deed from Phineas S. Fisk to Thomas M. Edwards. Deed from Benjamin F. Adams and wife to Charles Stratton; subject to any legal objection which may be made to their competency as evidence. Deeds filed Aug't 10, 1852, marked "A" to "G" inclusive. Sept. 24, 1852, on motion of Wells & Downer, solicitors for the complainant, it is ordered by the court that the four transcripts of deeds, to wit, Richard Montague to Phineas Fiske, marked "1," Oliver Holman and wife to Benjamin F. Adams, marked No. 2, William E. Dunbar and wife to Richard Montague, marked No. 3, and Richard Montague and wife to John P. Chapin, marked No. 4, be filed as evidence in this cause, subject to all legal exceptions to their competency, except the time of filing, Sept. 24, 1852.

By the court.

LEVI HUBBELL.

Sept. 24, 1852. The above deeds filed. Oct. 8, 1853, stipulation filed in the words and figures following, to wit: It is admitted that Carl Becman, one of the defendants to this suit, has, since the commencement thereof, departed this life, and that before his death, during the pendency of this suit, he sold and conveyed his interest in the premises unto David H. Waldo; and it is stipulated and agreed that the complainant may file a supplemental bill herein, making said Waldo a defendant thereto, and stating such other things as are proper therein; and said Waldo agrees to put in his answer to such bill within ten days, and to consent that all the testimony taken in this cause may be used at the hearing against him, the same as it might have been against said Becman, had he been alive, and subject to the same exceptions, and no other.

Sept. 30, 1853.

WALDO & ODY,
Att'ys and Sol'rs for David H. Waldo.

We consent to the filing of the supplemental bill, pursuant to the above stipulation.

BROWN & OGDEN,
Sol'rs for Kane & Tweedy.

Oct. 8, 1853. And now comes the complainant in this cause, by his solicitor, and suggests the death of Carl Becman, one of the defendants to this suit; and it appearing to the court, by stipulation filed herein, that David H. Waldo has, since the commencement of this suit, purchased the interest of said Becman in the land mentioned in said bill of complaint, it is, on motion of Downer & Wells, solicitors for said complainant, ordered by the court that said complainant have leave to file a supplemental bill setting up the facts, and bringing said Waldo before the court pursuant to said stipulation.

Oct. 8, 1853. By the court.

LEVI HUBBELL.

Same time, supplemental bill filed as follows:

STATE OF WISCONSIN.

To the Circuit Court for the county of Milwaukee.—In Equity.

Joel Parker, complaining, showeth unto the said court, that on or about the 10th day of January, A. D. 1851, your orator exhibited his original bill in this court against Charles J. Kane, Carl Becman, and others, therein stating in substance, among other things, that your orator has the title, either legal or equitable, to one undivided fourth part of the west half of the south half of the northeast quarter of section number twenty-one, township No. seven, range No. twenty-two, in the county of Milwaukee, State of Wisconsin, under and by virtue of certain conveyances in said bill mentioned, and praying in substance, amongst other things,

1428

that said defendants therein mentioned might be compelled to convey to your orator an undivided one-fourth part of said land, and that said Becman afterwards filed his answer in said cause; and your orator now states, that said Carl Becman has, since the commencement of this suit, departed this life, and that before his death he sold and conveyed his interest in said premises unto one David H. Waldo, of said county, whom the said complainant, by leave of court first had, makes a party defendant hereto and to said original bill, and prays for writ of subpœna against him.

And your orator states, and charges, that he is entitled to have a conveyance of title of said Waldo in and to said premises to him; that your orator is either the legal or the equitable owner thereof, and that said Waldo obtained title to said premises during the pendency of said suit, and has the same and no greater rights than said Becman had, and stands in his place; and your orator prays that he, said Waldo, may be compelled to answer this and said original bill; that said Waldo may be compelled to convey his interest in said premises to your orator, or such part thereof as he ought to convey, according to equity and good conscience; and he prays as in said original bill, and for all general and equitable relief in the premises.

DOWNER & WELLS,
Compl't's Sol'rs.

JOEL PARKER.

November 17, 1853. And now at this day come the parties by their solicitors, and this cause coming on for argument by leave of court and consent of parties, the separate answers of Charles J. Kane and David H. Waldo, and the replication of the complainant to said answer, filed as follows:

Circuit Court of Milwaukee county.

JOEL PARKER
vs.
CHARLES J. KANE et al.
} In Chancery.

Separate answer of Charles J. Kane, one of the defendants, to the bill of complaint of Joel Parker, complainant, against the said Kane and others, defendants.

This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage to the many errors and imperfections in said complainant's bill of complaint contained, for answer thereto, or to so much thereof as he is advised is or may be material for him to make answer, he answering saith, that it is true that he purchased of Peter Martineau, guardian, &c., one undivided fourth part of said southwest quarter of said northeast quarter mentioned in the complainant's bill, for the joint benefit of himself, John H. Tweedy, Carl Becman and James S. Brown, and that the purchase money was paid by them all in equal proportions

But this defendant, further answering, saith that he purchased in good faith, and denies all notice of any right, claim, equity or demand of any name, kind or nature of the said complainant, or any person through whom said complainant claims, except said Dunbar and his heirs, and that he believes that he *was* obtained a good title, and had no notice of said alleged mistake either directly or indirectly. This defendant, further answering, saith that of said mistake he hath no knowledge, but upon his information and belief denies that such mistake ever occurred, or that the said complainant or the said Montague ever had any legal or equitable interest or right of, in, or to the said quarter, and denies that the said Montague paid for, bargained for, or obtained a deed of said quarter.

And this defendant, further answering, saith that said mistake, if any, was made more than ten years before the commencement of this suit, and he claims all benefit of any saving statute of limitation of the State of Wisconsin, in the same manner as if the same were pleaded.

And this defendant, further answering, denies that the said complainant has any valid or legal interest or equitable right in the question of mistake set up in his said bill.

And this defendant further alleges that he paid in good faith for his interest in said quarter, at the rate of sixty dollars per acre, and that subsequently he purchased of the said Brown all his interest in said premises, and that the said Brown was a bona fide purchaser for a valuable consideration, without notice of any claim of said complainant. And this defendant further saith, that of the various other matters and things set forth in said complainant's bill he knows nothing, and calls for proof, denying all and all manner of combination and confederacy, and prays that this court will by its decree confirm and protect his title, and that he may be hence dismissed, with his costs in this behalf most wrongfully sustained.

CHARLES J. KANE,
By BROWN & OGDEN,
his Atty's & Sol'rs.

The separate answer of David H. Waldo, one of the defendants, to the original amended and supplemental bill of Joel Parker, complainant.

This defendant, now and at all times saving and reserving to himself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the said bill, amended bill, and supplemental bill, contained for answer thereunto, or unto so much or such parts thereof as this defendant is advised is material for him to make answer unto, he answers and says, that at some time in the winter of 1852 and 1853 he negotiated with Mr. Charles Becman, one of the defendants in this cause, for the purchase of all his interest in the northeast quarter of section 21,

town seven (7) of range 22, in Milwaukee county, which interest said Becman, by his agent and attorney, represented to be equal to full seventeen and one-half acres (17½ acres) undivided in the southwest quarter of the northeast quarter of section 21 aforesaid, and on or about the fourth day of April, A. D. 1853, this defendant took from the said Becman a deed in due form of law, properly executed and acknowledged, so as to be entitled to record, and which has since been recorded in the office of the register of deeds of Milwaukee county, conveying to this defendant the said seventeen and one-half acres in fee simple.

And this defendant says that he had no notice (unless it be by and through the pleading in this suit) of any of the circumstances set up in said bill, and relied upon by the complainant to show any legal or equitable right to or interest in the said seventeen and one-half acres, or any part thereof, or of any of the circumstances which are shown or can be shown to establish any right in any part of the interest so purchased by this defendant in Richard Montague, or in any one claiming by, through, or under said Montague, or in any one else claiming against said Becman at the time that this defendant purchased as aforesaid; and this defendant also denies that the said Charles Becman ever had any knowledge, information, or notice of any circumstances or facts whatsoever, showing or tending to show any interest, legal or equitable, in said Montague, or in any other persons claiming by, through, or under him, in any of the lands above referred to, at any time before the commencement of this suit, or otherwise than by the papers and pleadings in this cause.

And this defendant claims all benefit of the answer of Becman on file in this cause, in the same manner and to the same extent (so far as the same shall be applicable) as though this defendant had originally been party defendant in this suit in the place of the said Becman, and had filed the last mentioned answer in his own name, as the said Becman did in his name. And this defendant claims to be still the owner in fee simple of the said seventeen and one-half acres undivided in said southwest quarter of said northeast quarter of said section 21.

And this defendant denies that said Becman was interested in any way in the purchase of Charles J. Kane from the guardian of heirs of Dunbar mentioned in said bill of complaint; and this deponent avers that this suit is barred by the statute of limitations in such case. And this defendant denies all unlawful combinations, &c., without that *than* any other matter or thing whatsoever in the said bill contained, and not herein and hereby fully and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant. And this defendant asks to have his rights protected in the premises, that said bill, amended bill, and supplemental may be dismissed,

and that this defendant may be hence discharged with his reasonable costs and charges in this behalf most wrongfully sustained.

DAVID H. WALDO.

WALDO AND ODY,
Solicitors for Def't.

In the Circuit Court in and for the county of Milwaukee, Wisconsin.

JOEL PARKER
vs.
CHARLES J. KANE et al. } In Chancery.

The replication of Joel Parker, complainant, to the separate answer of Charles J. Kane, one of the said defendants, to the bill of complaint of the said complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this complainant and repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied into, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as by his said bill he has already prayed.

DOWNER & WELLS & B.,
Sol's for Com't.

In the Circuit Court of the county of Milwaukee and State of Wisconsin.

JOEL PARKER
vs.
CHARLES J. KANE and others. } In Chancery.

The replication of Joel Parker, complainant, to the separate answer of David H. Waldo, one of the defendants, to the bill of complaint of the above complainant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto say, that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as by his said bill he has already prayed.

DOWNER & WELLS & B.,
Solicitors for Comp't.

Same time, a deed from Richard Montague and wife to Joel Parker filed; and the argument proceeding and being concluded, the cause is submitted to the court. Same day, decree filed as follows: This cause came on to be heard this day upon the bill of complaint, answers, replications, exhibits, and testimony, and was argued by counsel upon either side; and among other things it appeared to the court from the pleadings and testimony, and especially from the reading of the several deeds which are mentioned by the defendants in their answer as furnishing evidence of their respective rights to and interest in the land which is the subject of controversy in this suit, (all which deeds were in evidence,) that those of the said defendants who claim in their said answer to be purchasers of said land at or since the guardian's sale mentioned in the pleadings, to wit, the defendants Charles J. Kane, John H. Tweedy, and David H. Waldo, are bona fide purchasers for a valuable consideration of the said land which is hereinafter described, without notice of the complainant's equities; and thereupon, and upon consideration thereof, and upon motion of the defendant's counsel, it is ordered, adjudged, and decreed that the deed mentioned in the said bill of complaint from William E. Dunbar and wife to Richard Montague, which has been recorded in the office of the register of deeds of the county of Milwaukee, in the State of Wisconsin, on the 16th day of June, 1836, in volume "E" of deeds, at page 386, (according to the statement of said bill) be and the same hereby is held and declared to be inoperative and ineffectual to affect the rights of said defendants as bona fide purchasers as aforesaid; that said defendants, Tweedy, Kane, and Waldo, have, as such bona fide purchasers as aforesaid, for a good and valuable consideration, and without any notice of any of the equities set up in said bill, acquired a good and perfect title as against the said complainant, and all others claiming or to claim by, through, or under the said deed by said William E. Dunbar to said Montague, to the said land so in dispute in this suit, to wit, the undivided one-fourth part of the southwest quarter of the northeast quarter of fractional section number twenty-one (21), in township number seven (7) north, of range number twenty-two east; the said Tweedy having two and one-half acres, the said Kane five acres, and the said Waldo two and one-half acres undivided of the said ten acres undivided which are in controversy in this suit. That the bill annexed, bill and supplemental bill in this cause be and the same are hereby dismissed, and that the complainant pay the costs to be taxed in this suit. Dated November, A. D. 1853.

By the court.

LEVI HUBBELL.

Dec. 23, 1853. On motion of the complainant's solicitors in this cause, it is ordered by the court, in case of an appeal by the com-

plainant in this cause from the final decree of this court (among other things dismissing the bill of complaint in this cause) to the supreme court, that said complainant give bond to said defendants in the penal sum of three hundred dollars, conditioned according to law, and with such security as the statute required.

LEVI HUBBELL, *Judge*.

Dec. 23, 1853.

January 7, 1854. And now at this day, to wit, at the 7th day of January, A. D. 1854, comes Joel Parker, the complainant in the above entitled cause, and hereby appeals from the first decree of the court in said cause made on or about the 17th day of November, A. D. 1853, (among other things dismissing the bill of said complainant) to the supreme court of the State of Wisconsin, and said complainant hereby enters his appeals from such decree to said supreme court.

Dated January 7th, 1854.

DOWNER & WELLS,
Compt's Sol'rs.

Same day, bond of complainant, with Charles K. Wells and Jason Downer as sureties, filed.

January 14, 1854. Appeal made up and mailed to clerk of supreme court.

February 23, 1856. The original papers in this cause received from supreme court and placed on file; also remittitur from said court, as follows: This cause came on to be heard on appeal from the decree of the circuit court of Milwaukee county, and was argued by counsel. On consideration whereof, it is by the court now here considered, ordered, adjudged and decreed, that the decree of the circuit court of Milwaukee county in this cause as to the said defendants, Charles J. Kane, James S. Brown, and David H. Waldo, be and the same is hereby affirmed with costs, and that said decree as to the other defendants herein be and the same is hereby reversed with costs, and that it be so certified to said circuit court.

Sept. 10, 1856, special term. Affidavit of John H. Tweedy filed. Same time, and now comes John H. Tweedy, one of the defendants in the above entitled cause, by Brown & Ogden, his solicitors, and moves the court for liberty to amend his answer filed in said cause by setting up a formal plea of the statute of limitations, &c., per motion filed.

Same time, to wit, Sept. 10, 1856. And now comes the complainant by Jason Downer, his solicitor, and presents to the court an order and decree in this cause, and moves the court to enter, sign, and enrol the same.

September 16, 1856. And now comes the defendant Tweedy, by Brown & Ogden, his solicitors, and the complainant by J. Downer, his solicitor, and the said motion for liberty to amend his answer

filed in said cause by setting up a formal plea of the statute of limitations, &c.; and the same being argued and submitted, the court takes time to consider, &c.

Oct. 24, 1856. And now at this day, the court being well and sufficiently advised of and concerning said motion of defendant, Tweedy, to amend his answer, &c., it is ordered by the court that said motion be and is hereby overruled and denied. Same day, and *and* the judge, on application of J. S. Brown, sol'r for def't, Tweedy, fixes the amount of bond, on appeal from said order, at three hundred dollars.

December 27, 1856, regular term. On reading the decree of the supreme court in this cause, affirming the decree of this court as to the defendants, Kane, Brown and Waldo, and reversing it as to John H. Tweedy and others, and on motion of the complainant's solicitors, and after argument of counsel, it is ordered and decreed by the court, and the court doth hereby order, adjudge, and decree, that the defendant John H. Tweedy convey to the complainant, by deed with covenant of special warranty, an undivided sixteenth of the southwest quarter of the northeast quarter of section No. twenty-one, in township No. seven north, of range No. twenty-two east, being two acres and a half, and being also an undivided one-fourth of the undivided ten acres sold by the defendant Peter Martineau, as guardian, as described in the pleadings in this cause; and it is further ordered and decreed by the court, and the court doth hereby order, adjudge, and decree, that said John H. Tweedy and all the defendants to this cause, and all and every person or persons claiming or to claim said two acres and a half undivided, or any part or portion thereof or interest therein, by, from, through or under said Tweedy or said defendants, any or either of them, by conveyance or agreement or otherwise, since the commencement of this suit, to wit, since the 10th day of January, A. D. 1851, be and the same hereby are forever barred from all right, title, and interest, legal or equitable, of, in, and to said two and a half acres undivided, and the title to the same is hereby transferred, conveyed to, and vested in said complainant, his heirs and assigns, as fully as this court by its decree can pass and vest the same.

Dated Dec. 27th, 1856. By the court.

ALEX. W. RANDALL.

April 3, 1857, regular term. On motion of compt's sol'r and att'y, it is ordered by the court that this cause, as to Peter Martineau, be and the same is hereby discontinued without prejudice.

Dated April 3, 1857. By the court.

ALEX. W. RANDALL.

The counsel for the defendant then, further to maintain and prove said issue on his part, produced, offered and read in evidence in this cause the record of proceedings in the circuit court of Wisconsin for Milwaukee, in a cause then lately pending, as follows, to wit:

Pleas before the Honorable Levi Hubbell, judge of the second judicial circuit, State of Wisconsin, and presiding judge of the circuit court in and for the county of Milwaukee, in said State, at a term of said court, and holden at the court-house in that city of Milwaukee on the third Monday of September, A. D. 1850.

EGBERT MOSLEY, *Sheriff*.
HENRY K. WHITE, *Clerk*.

CHARLES J. KANE, JOHN H. TWEEDY and JAMES S. BROWN
vs.
CARL BECMAN, JOEL PARKER, BENJAMIN F. ADAMS and others, unknown owners.

Bill for Partition of lots 1 and 6, in N. E. $\frac{1}{4}$ sec. 20, T. 7, R. 22.

Be it remembered, that heretofore, to wit, on the 9th day of August, 1850, comes the complainant by Holliday and Brown, their solicitors, and file their certain bill of complaint in the words and figures following, to wit:

STATE OF WISCONSIN.

In Chancery.

To the Circuit Court of Milwaukee county.

Charles J. Kane, John H. Tweedy, and James S. Brown, of the city of Milwaukee, and citizens of the State of Wisconsin, bring this their bill of complaint against Carl Becman, of St. Louis, an alien, Joel Parker, of Massachusetts and a citizen of the State of Massachusetts, Benjamin F. Adams, whose place of residence is unknown to your orator, and the unknown owners of lots number one and six in the northeast quarter of section number twenty-one, in township number seven north, of range number twenty-two east.

And thereupon your orators complain and say, that they are seized in fee simple of the undivided three-eighths of said lots one and six in said northeast quarter, containing eighty-nine and twenty-five one hundredths acres, according to government survey, the interest of your orators aforesaid being equal to thirty-three acres and forty-six thousand eight hundred and seventy-five one hundred thousandths ($\frac{4\,6\,8\,7\,5}{1\,0\,0\,0\,0\,0}$) of an acre. That your orators are seized of said interest as tenants in common with the said Carl Becman and the other defendants to this bill, and that the said Carl Becman is seized of an estate of inheritance in the fee simple in one undivided eighth of said premises, and that your orators are unable to ascertain and do not know with certainty the precise interests of the said other defendant; but, as the records in the office of the register of deeds of said Milwaukee county show, your orators believe that the said Joel Parker is seized in fee simple of an interest of one-sixteenth of said premises, that the said Adams is seized of an estate in fee simple in one-quarter of said premises, and that the remaining three-sixteenths did belong to one Phineas

Fisk, who, as your orators are informed and believe, and so charge the fact to be, is dead, leaving divers persons, to your orators unknown, his heirs. And your orators further show, that they do not know the names of the said persons, heirs of the said Fisk as aforesaid, and that if the said Becman, Parker and Adams do not now own the interests hereinbefore mentioned as belonging to them respectively, such interest belongs to unknown owners, whose names, as also the names of the said heirs, your orators are unable to ascertain.

Your orators further show, that it is greatly for their interest and advantage to have the said premises divided among the several tenants in common thereof, and that the said interest of your orators be set off to them jointly as one interest, and that your orators are unable to effect a division of said premises without the aid of this court, as by statute provided. Your orators further show, that said premises are of great value, to wit, of the value of eight thousand dollars.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have relief hereby prayed, and that they may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth, as by note hereunder written they are severally required to answer—that is to say:

1st. Whether you are seized of any portion, and how much, of said premises set forth; how you acquired title?

2d. Whether you are seized as tenants in common?

And the commissioners are appointed to make partition of the said premises according to the rules and practice of this court, if it shall be found that the whole or any part can be divided without injury to the interest of the tenants in common thereof, and proceed in the premises according to the statute in such case made and provided; and that if it shall be found that the whole or any part thereof are divisible, that the interest of your orators therein, as set forth in this bill, be set off to them jointly, separate and apart from the others of said tenants in common, and that your orators may hold such part as may be set off to them as aforesaid in severalty or apart from said other tenants in common; and for such other or further relief in the premises as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orators the most gracious writ of subpœna issuing out of and under the seal of this honorable court, directed to the said Carl Becman, Joel Parker, Benjamin F. Adams, and to said unknown owners, therein and thereby commanding them and each of them, at a certain time and under a certain penalty therein to be specified,

to be and appear before this honorable court, and then and there to stand to and abide by and perform such other direction or decree in the premises as to your honor may seem meet, &c.

CHARLES J. KANE.

THOMAS L. OGDEN, *of Counsel.*
HOLLIDAY & BROWN,
Sol'rs for Comp'ts.

STATE OF WISCONSIN,
Milwaukee county, ss.

Charles J. Kane, being duly sworn, deposeth and saith, that he has read the foregoing bill by him subscribed, and knows the contents thereof, and that the same are true according to the best of his knowledge, information and belief.

CHARLES J. KANE.

Subscribed and sworn to before me this 5th day of August, 1850.

H. W. TENNEY,
Court Comm'r.

(*Note*).—The defendants, Carl Becman, Benjamin F. Adams, and Joel Parker, are required to answer interrogatories No. 1 and 2.

HOLLIDAY & BROWN, *Sol'rs.*

Same time, subpœna issued, returnable on the 23d day of August, 1850. Subpœna returned August 13, 1850, endorsed as follows to wit: "Personally served the within subpœna by delivering a copy of the same to the within named Carl Becman this 12th day of August, 1850; Joel Parker and Benjamin F. Adams not found. Fees $1 44.

"EGBERT MOSLEY, *Sheriff.*
"By C. J. RICHARDS, *Under Sheriff.*"

Sept. 3d, 1850. It appearing to the satisfaction of this court, by the affidavit of Charles J. Kane, that the said defendants, Joel Parker and Benjamin F. Adams, reside out of this State, and cannot be found therein; and it further appearing that the bill in this cause was filed for the partition of the following lands, to wit, lots number one and six in section number twenty-one, township No. seven north, of range No. twenty-two east, (in the first ward of the city of Milwaukee,) in the said county of Milwaukee, and that there are parties having an interest in said premises who are unknown; it is therefore, on motion of Holliday, Brown and Ogden, solicitors for the complainants, ordered that the said defendants, Joel Parker and Benjamin F. Adams, and the said unknown owners, and all parties interested in the said premises above described, appear and answer the bill in this cause by the second day of December, A. D. 1850, or that such bill be taken as confessed

by them. It is further ordered, that a copy of this order be published in the Milwaukee Sentinel and Gazette, a paper printed in the said city of Milwaukee, in the county aforesaid, for six weeks, once in each week, successively, the first publication to be within twenty days from the date of this order. By the court.

Nov. 29, 1850, comes the def't C. Becman, by Waldo and Ody, his solicitors, and enters his appearance.

Same time, separate answer of said defendant, C. Becman, filed as follows:

THE STATE OF WISCONSIN.

In Chancery.

The several answer of Carl Becman, one of the defendants, to the bill of complaint of Charles J. Kane, John H. Tweedy, and James S. Brown, complainants, against this defendant and Joel Parker, Benjamin F. Adams, and the unknown owners of lots number one and six, in the northeast quarter of section number twenty-one, in township number seven north, of range number twenty-two east, defendants.

This defendant, now and at all times saving and reserving to himself all advantage and benefit of exception to the errors and imperfections contained in the said bill of complaint of the said complainants, for answer thereto, or to so much thereof as he is advised it is material for him to make answer unto, he, answering, admits that the rights and interests of the several parties complainant, named in the bill of complaint, and of this defendant, to the lots or parcels of ground therein mentioned and described, and to each of them, are truly set forth and stated in such bill, and this defendant submits to such decree as this court may make in the premises for a partition of such premises, and for such other or further relief as may be agreeable to equity and good conscience.

CARL BECMAN,
By his attorney in fact, JOSEPH ODY.

WALDO & ODY,
Sol'rs for Def't.

STATE OF WISCONSIN,
County of Milwaukee, ss.

Joseph Ody, of the city of Milwaukee, in said county, being sworn, saith that Carl Becman, the defendant in the foregoing answer, is now, as this deponent verily believes, absent from the city and county of Milwaukee, viz: on a voyage to St. Louis, in the State of Missouri, he having left the city of Milwaukee for that place on or about the fifteenth day of November inst.; that this deponent is the attorney in fact of the said Carl Becman, by virtue of a special power and authority given to him in relation to the matters for which this suit is brought; that this deponent has read the

foregoing answer, and knows the contents thereof; and that this deponent has information as to all the matters stated therein, and from such information believes such matters to be therein truly stated, and such answer to be true.

JOSEPH ODY.

Subscribed and sworn to before me this twenty-ninth day of November, A. D. 1850.

O. H. WALDO,
Notary Public in Milwaukee County.

Afterwards, to wit, January 27, 1851, separate answer of Joel Parker filed as follows:

In the circuit court of Milwaukee county, Charles J. Kane, John H. Tweedy, and James S. Brown vs. Carl Becman, Joel Parker, Benjamin F. Adams, and unknown owners, for the partition of lots number one and six in the northeast quarter of section number twenty-one, in township number seven north, of range number twenty-two east.

Joel Parker, one of the defendants in this case, makes answer, according to the best of his knowledge, information and belief, and says he claims to be seized of one undivided half of the premises described in the bill, as tenant in common through several conveyances, viz: a mortgage from John P. Chapin of one-sixteenth of the same, dated June 20th, 1839, and a subsequent absolute deed of the same sixteenth, dated May 18th, 1841; also a conveyance of one-eighth of the same from Charles Stratton, dated June 10th, 1847, who derived his title through Benjamin F. Adams by a deed dated the same day; also a deed from Benjamin F. Adams to said Parker of one-eighth, dated December 10, 1847, the said two-eighths being the quarter supposed by the plaintiff's bill to belong to the said Adams; also a deed of three-sixteenths of the same from Thomas M. Edwards and Mary H. his wife, William Densmore and Julia A. his wife, and Francis or Frank S. Fisk, dated Nov. 11, 1850; the said Edwards deriving title to one-fourth of said three-sixteenths by deed dated May 30th, 1848, from Phineas S. Fisk, and the said Phineas S. Fisk, Mary H. Edwards, Julia A. Densmore, and Francis S. Fisk, being the children and heirs, or legators, of Phineas Fisk, late of Keene, in New Hampshire, deceased, mentioned in said bill; the said three-sixteenths being the same supposed by said bill to belong to the heirs of said Fisk.

And the said Parker claims all the benefit and rights that may be derived from a sale of said undivided half of the same premises to *Johua* Hathaway, of Milwaukee, for certain taxes assessed in the county of Milwaukee for the year 1845, for which the said undivided half was sold, in parcels, on the 15th of April, 1846.

The said Parker cannot state all the aforesaid facts from his own knowledge, as some part of the business was transacted through the intervention of agents.

1434

And the said Parker further says, that his claim to the same is connected with his claim to one undivided half, as tenant in common, of the west half of the south half of said northeast quarter, he claiming one undivided half of all that quarter section; that there is a controversy about the title to that part of said quarter section, and that he proposes a bill in chancery in order to bring that controversy properly before the court for adjudication.

JOEL PARKER.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

Sworn and subscribed before me this the third day of January, in the year one thousand eight hundred and fifty-one.

Witness my name, style, and seal of office.

J. H. BUCKINGHAM, [L. S.]
A commissioner for the State of Massachusetts, appointed by the governor of Wisconsin to administer oaths and affirmations, &c.

Affidavit of publication filed June 11, 1851. Same time, abstract of title filed.

Same time, to wit, June 11, 1851, it appearing to the satisfaction of this court that an order was duly entered in this cause dated August 27, A. D. 1850, requiring the defendants Joel Parker, Benjamin F. Adams, and all unknown owners interested in said premises described in said bill, by the second day of December, A. D. 1850, and due proof of the publication of said order having been read and filed in this court, and it further appearing to the satisfaction of this court that the said Joel Parker, Benjamin F. Adams, and unknown owners, neither of them have appeared or answered said bill of complaint, on motion of Holliday, Brown and Ogden, sol's for complainants, it is ordered that the bill in this cause be taken as confessed against them the said Joel Parker, Benjamin F. Adams, and unknown owners. June 11, 1851. By the court, &c.

At a regular term of the circuit court of Milwaukee county, in the State of Wisconsin, in chancery sitting, held at the court-house in the city of Milwaukee on the day of June, A. D. 1851, before the Honorable Levi Hubbell, judge, &c., on motion of Brown and Ogden, solicitors for the complainants, it is ordered that it be referred to Henry K. White inquire into the situation of the said premises, of which partition is sought in this cause, and to report whether said premises or any part thereof are so situated that a partition and division thereof among the parties cannot be made without great prejudice to the owners.

June 11, 1851. By the court, &c.

June 11, 1851, comes in open court Henry K. White, referred as aforesaid, and makes his report in the words and figures following, to wit:

To the Honorable Levi Hubbell, judge of the circuit court of Milwaukee county, in the State of Wisconsin, in chancery sitting.

The undersigned, to whom it was referred by the order of the court to inquire into the situation of the said premises of which partition is sought in this cause, and report on the matters submitted in the said order, respectfully represents, that he has inquired into the situation of said premises, and that the greater part thereof are so situated that partition and division thereof can be had among the parties interested therein without prejudice to the owners, but that the water-power on the Milwaukee river claimed by the owners of said premises as belonging thereto cannot be divided among said parties without great prejudice to the said owners, and the undersigned would recommend that ten acres, or so much land as may be deemed necessary for the enjoyment of said water-power, bounded on said river on one side, be set off, and, together with said water-power, be sold for the benefit of the owners, according to the statute in such case made and provided.

(Signed) H. K. WHITE, *Clerk*.

At a regular term of the circuit court of Milwaukee county, in the State of Wisconsin, in chancery sitting, held at the court-house in the city of Milwaukee on the 11th day of June, A. D. 1851; present, Hon. Levi Hubbell, judge, &c.

This cause came on to be heard at this term, and was argued by counsel, and was thereupon, upon consideration thereof, and it appearing to the said court now here that since the filing of the bill in this cause that James S. Brown, one of the complainants, and Carl Becman, one of the defendants in this cause, have respectively conveyed their shares and interests to Charles J. Kane, one of the complainants, and that the said Benjamin F. Adams and the heirs of Phineas Fiske, deceased, have conveyed their interest in the said premises to the defendant, Joel Parker, it is ordered, adjudged, and decreed, that the rights, titles, and interests of the said Charles J. Kane and John H. Tweedy and the said Joel Parker in and to the said premises of which partition is sought, to wit, lots numbered one (1) and six (6) in the northeast quarter of section number twenty-one (21) in township numbered seven (7) north, of range number twenty-two (22) east, in Milwaukee county, containing eighty-nine and twenty-five one hundredths of an acre, are as follows: that the complainant Charles J. Kane is seized of and well entitled to an estate in fee simple in and to an undivided three-eighths of the said premises; that the complainant John H. Tweedy is seized of and well entitled to an estate in fee simple in and to an undivided one-eighth of the said premises; that the defendant Joel Parker is seized of and well entitled to an estate in fee simple in and to an undivided one-half of the said premises.

And it is further ordered, adjudged, and decreed, that if, upon

a reference, it shall appear that a partition of the said premises, or any part thereof, can be made without prejudice to the owners, partition be made of the said premises among the said parties according to their several rights and interests, as herein adjudged and decreed, and according to the statute in such cases made and provided. And in case it shall appear that a partition of the said premises, or any portion thereof, cannot be made without prejudice to the owners, that the said premises, or such portion thereof, be sold under the direction of the sheriff of the county of Milwaukee, as provided by the statute

Dated June 11, 1851. By the court.

(Signed) LEVI HUBBELL.

And thereupon, upon reading and filing the report of H. K. White, and on motion of Brown & Ogden, it is ordered by the court here, that John P. McGregor, Francis Randall, and Eliphalet Cramer, being discreet and disinterested freeholders, be and are hereby appointed as commissioners to make the partition decreed in this cause, according to the respective rights and interests of the parties, as the same are ascertained and determined by this court, in conformity with the decree and report of the said H. K. White, and according to the statute in such case made and provided.

Oct. 4, 1851, continued. March 15, 1852, continued. June 15, 1852, continued. Oct. 9, 1852, continued. February 15, 1853, continued. June 11, 1853, continued. August 17, 1853, affidavit of John H. Tweedy and notice filed.

Same day, and now come the complainants in this suit, by Brown & Ogden, their attorneys, and move the court on the affidavit of John H. Tweedy, now on file, that in consequence of the neglect of the said Eliphalet Cramer, one of the commissioners appointed by the court to make partition, to serve as such commissioner, another commissioner may be *and be* appointed by this court to act as commissioner in lieu of the said Eliphalet Cramer. Same day, on reading and filing the foregoing petition, &c., it is hereby ordered that Levi Blossom be and he is hereby appointed a commissioner in place of Eliphalet Cramer within mentioned, and with like powers and duties in all respects.

Dated Aug't 17th, 1853. By the court.

LEVI HUBBELL.

December 31, 1853. Oath of commissioners filed.

April 10, 1854. And now come the commissioners appointed by this court to make partition of the premises mentioned in this cause, and file their said report in the words and figures following, to wit:

To the Circuit Court of Milwaukee county.

We, Francis Randall, Levi Blossom, and John P. McGregor, commissioners appointed by an order of this court made in the

above entitled cause, to make partition and division of certain lands, tenements, and hereditaments in the pleadings in this cause, and in the decree in partition duly made on the 11th day of June, A. D. 1851, particularly mentioned and described, do hereby report to this court, that having taken upon us the duties imposed by the said decree, we took and subscribed an oath as required by the statute, which said oath is now on file in this court; and we deliberately examined all the said lands and tenements, and employed a surveyor, and caused to be made all necessary maps and surveys to enable us to perform the duties imposed upon us; that we did, pursuant to the said decree and the statute, proceed to make and did make partition of all the said lands and tenements in the said decree mentioned and described, in manner following, that is to say: we allotted and set apart to the said Charles J. Kane, as and for the part and share of the said Charles J. Kane of the said premises whereof we have made partition as aforesaid, according to the said interest of an undivided three-eighths thereof, as the same hath been ascertained and examined by this court, all that portion of the said premises described and bounded as follows—that is to say: beginning at the northeast corner of the northeast quarter of section twenty-one (21) in township seven north, of range twenty-two (22) east; running thence west on the section line twelve (12) chains; thence south 17 chains and fifty-six links; thence south forty degrees west (S. 40° W.) five (5) chains and fifty-two and one-half (52½) links; thence south thirty-nine degrees and forty-five minutes east (S. 39° 45′ E.) twelve (12) chains and fifty-five and one-third (55⅓) links; thence south thirty-four degrees and thirty-three minutes (S. 34° 33′ W.) one hundred and forty-seven and one-half (147½) feet; thence south 39 degrees and 45 minutes east 147½ feet; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-eight degrees and twenty-five minutes east (S. 38° 25′ E.) to the south line of the premises of which partition is sought, or of lot six (6); thence east on the said south line to the southeast corner of lot six (6); thence north along the east boundary line of said section twenty-one (21) eighteen (18) chains and seven (7) links; thence north fifty-five degrees and twenty-seven minutes west (N. 55° 27′ W.) nine (9) chains and eight links; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) thirteen (13) chains and nineteen (19) links to the east line of the said section twenty-one (21), and thence north of the said east line to the place of beginning, containing thirty-five and fifty-five hundredths ($35\frac{55}{100}$) acres, more or less, together with the hereditaments and appurtenances thereunto belonging; being quality and quantity, relatively considered, three full equal eighth parts of the said lands and premises whereof we have made partition as aforesaid, except the certain piece of land

set apart as hereinafter more particularly mentioned, to be sold in connection with the water-power on and appurtenant to the said land.

And we do further certify and report, that we allotted and set apart to the said John H. Tweedy, as and for the part and share of the said John H. Tweedy of the said premises whereof we have made partition as aforesaid, according to the said interest of an undivided one-eighth thereof, as hath been ascertained and determined by this court, all those certain portions of the said premises described and bounded as follows: commencing on the south line of lot number six (6), in township seven (7) north, of range twenty-two (22) east, at a point ten (10) chains and nineteen (19) links east of the southwest corner thereof; running thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) seven (7) chains and eighty-two and one-third (82⅓) links; thence south eight degrees and twenty-five minutes east (S. 38° 25′ E.) to the said south line of lot six (6), and thence west on the said south line to the place of beginning, containing three (3) acres more or less; also commencing on the east line of the said section twenty-one (21) at a point eighteen (18) chains and seven (7) links north of the southeast corner of said lot number six (6); running thence north fifty-five degrees and twenty-seven minutes (N. 55° 27′ W.) nine (9) chains and eight (8) links; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) thirteen (13) chains and nineteen (19) links to the said east line of section twenty-one (21), and thence south on the said east line to the place of beginning, containing six (6) acres more or less, together with the hereditaments and appurtenances thereunto belonging; being quantity and quality, relatively considered, one full equal eighth part of the said lands and premises whereof partition is made as aforesaid, except the certain piece of land set apart, as hereinafter more particularly mentioned, to be sold in connection with the water-power on and appurtenant to the said land.

And we do further certify and report, that we allotted and set apart to the said Joel Parker, as and for the part and share of the said Joel Parker of the said premises whereof we have made partition as aforesaid, according to the said interest of an undivided one-half thereof, as hath been ascertained and determined by this court, all that certain portion of the said premises described and bounded as follows: commencing on the north line of the said section twenty-one (21) in township seven (7) north, of range twenty-two (22) east, twelve (12) chains west of the northeast corner thereof; running thence south seventeen (17) chains and fifty-six (56) links; thence south forty degrees west (S. 40° W.) five (5) chains and fifty-two and one-half (52½) links; thence south thirty-nine degrees and forty-five minutes east (S. 39° 45′ E.) twelve (12) chains and fifty-five one-third (55⅓) links; thence south thirty-four degrees and thirty-three minutes west (S. 34° 33′ W.) one hundred

and forty-seven and one-half (147½) feet; thence south thirty-nine degrees and forty-five minutes east (S. 39° 45′ E.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-four degrees and thirty-three minutes west (S. 34° 33′ W.) five (5) chains and fifty-eight (58) links, to the south boundary of the said northeast quarter section; thence west along the said south boundary ten (10) chains and nineteen (19) links to the southwest corner of lot number six (6); thence north on the west line of the said lot number six (6) twenty (20) chains to the northwest corner thereof; thence west three (3) chains and ninety-one and one-half (91½) links; thence north forty-four degrees and thirty-five minutes east (N. 44° 35′ E.) five (5) chains and fifty-seven (57) links; thence north thirty-nine degrees and forty-five minutes west (N. 39° 45′ W.) to the Milwaukee river; thence northwardly along the Milwaukee river to the north boundary line of the said section twenty-one (21), and thence east along the said north boundary line seven (7) chains and thirty-four and one-third (34⅓) links to the place of beginning, containing thirty-seven and four hundred and ninety-seven thousandths ($37\frac{497}{1000}$) acres more or less, together with the hereditaments and appurtenances; the same being quality and quantity, relatively considered, one full equal one-half part of the said lands and premises whereof partition is made as aforesaid, except the certain piece of land set apart as hereinafter more particularly mentioned, to be sold in connection with the water-power on and appurtenant to the said land; said premises, however, being subject to the rights and privileges connected with and appurtenant to the part therein recommended to be sold.

And we do further certify and report, that we allotted and set apart, to be sold under the direction *an* order of this court, the same being so situated that a partition and division thereof amongst the persons interested cannot be made without great prejudice to the owners, all that portion of the said premises described as follows, to wit: all the water-power on and appurtenant to the said land of which partition is made as aforesaid, with whatever may be convenient to the full and complete enjoyment of the same, being all the right to build or maintain on the said Milwaukee river, on the said land, any dam, together with the privilege of overflowing so much of the said land as is now overflowed or may be hereafter overflowed by the water of the said river, with the dam raised to its present height; also the following piece, parcel, or lot of land bounded and described as follows, to wit: all that part of lot number one in section number twenty-one (21), in township seven (7) north, of range twenty-two (22) east, bounded as follows: commencing on the present margin of the Milwaukee river at the point where the same is intersected by the south line of said lot number one (1); running thence easterly on the said south line eleven (11) chains and thirty-nine and one-half (39½) links; thence north forty-four degrees and thirty-five minutes east (N.

44° 35' E.) five (5) chains and fifty-seven links (57 links); thence north thirty-nine degrees and forty-five minutes west (N. 39° 45' W.) three (3) chains and sixty-six (66) links to the margin of the said river; and thence in a southwesterly direction along the margin of the said river to the place of beginning, containing two (2) acres and thirty-six hundredths ($\frac{36}{100}$) of an acre, more or less, with the hereditaments and appurtenances thereunto belonging. And we do further certify and report, that we ordered and directed the map of the said lands and premises hereto attached, signed by us and made a part of this our report, and that the same contains the division and allotments hereinbefore described.

And so we, the said commissioners, have made the said partition of the said premises between the said parties in this cause, according to their respective rights as ascertained and determined by the court, in and by the decree aforesaid, except as to that portion, a partition of which could not be made without great prejudice to the owners, which portion we have carefully designated and described as aforesaid. In testimony whereof, we, the said commissioners, have to this our report set our hands this thirty-first day of December, A. D. 1853. FRANCIS RANDALL, [SEAL.]
JOHN P. McGREGOR, [SEAL.]

We do hereby certify that the expenses attending the said partition are as follows:

Surveyor's Fees:

1853, Sept. 3d.	To 16 days' work, at $3	$48 00
	" Assistants 6 days, a $2	12 00
	" Part of another day	1 75
	" Stationery	1 33
Oct. 8.	Running out heirs, according to comm's division, 3½ days, $3	10 50
	Assistants	1 50
		$70 08
	Oath of commissioners and ack. fees	75

Comm's Fees:

Oath	$0 38
Acknowledgments	75
Services of F. Randall	15 00
" L. Blossom	15 00
" McGregor	15 00

F. RANDALL,
JOHN P. McGREGOR,
Commissioners.

[*Here follows map—see original, page* 112.]

STATE OF WISCONSIN,
Milwaukee county, ss.

Be it remembered, that on the thirty-first day of December, A. D. 1853, personally appeared before me Francis Randall, one of the commissioners within named, and on the 10th day of January, A. D. 1854, pesonally appeared before me John P. McGregor, another of the commissioners within named, and each for himself acknowledged that he executed the above report freely and voluntarily, for the uses and purposes therein mentioned.

DAVID B. OGDEN,
Not. Pub. resid. in Mil. city.

Special term, April 10th, 1854. This cause came on to be further heard, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz: that the report of Francis Randall, Levi Blossom, and John P. McGregor, commissioners appointed by this court to make partition and division of the real estate set forth in the pleadings, and in the decree in partition made by this court, which said report is now on file, be and the same hereby is confirmed.

And it was further ordered, adjudged, and decreed that the part or allotment of the said premises set apart, allotted and assigned by the said commissioners to said Charles J. Kane, complainant, as for his part and share, according to the said interest of an undivided three-eighths, as the same hath been ascertained and determined by this court and more particularly described in the said report as follows, to wit: beginning at the northeast corner of the northeast quarter of section twenty-one (21), in township seven (7) north, of range twenty-two (22) east; running thence west on the section line twelve (12) chains; thence south seventeen (17) chains and fifty-six (56) links; thence south forty degrees west (S. 40° W.) five chains and fifty-two and one-half (52½) links; thence south thirty-nine degrees and forty-five minutes east (S. 39° 45′ E.) twelve (12) chains and fifty-five and one-third (55⅓) links; thence south thirty-four degrees and thirty-three minutes west (S. 34° 33′ W.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-nine degrees and forty-five minutes east (S. 39° 45′ E.) one hundred and forty-seven and one-half (147½) feet; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-eight degrees and twenty-five minutes east (S. 38° 25′ E.) to the south line of the premises of which partition is sought, or of lot six (6); thence east on the said south line to the southeast corner of said lot six (6); thence north along the east boundary line of the said section twenty-one (21) eighteen (18) chains and seven (7) links; thence north fifty-five degrees and twenty-seven minutes west (N. 55° 27′ W.) nine (9) chains and

eight (8) links; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) thirteen chains and nineteen (19) links to the east line of the said section twenty-one (21); and thence north on the said east line to the place of beginning, containing thirty-five and fifty-five hundredths (35 $\frac{55}{100}$) acres more or less, as the same is delineated on the map or plat attached to the report of the said commissioners, with the hereditaments and appurtenances, should be and was vested in him the said Charles J. Kane in severalty, to be had, held, and enjoyed by the said Charles J. Kane, his heirs and assigns forever.

And it was further ordered, adjudged, and decreed that the part or allotment of the said premises set apart, allotted and assigned by the said commissioners to the said John H. Tweedy, complainant, as for his part and share, according to the said interest of an undivided one-eighth as the same hath been ascertained and determined by this court, and more particularly described in the said report, as follows, to wit: commencing on the south line of lot number six (6) in township seven (7) north, of range twenty-two (22) east, at a point ten (10) chains and nineteen (19) links east of the southwest corner thereof; running thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) seven (7) chains and eighty-two and one-third (82$\frac{1}{3}$) links; thence south thirty-eight degrees and twenty-five minutes *minutes* east (S. 38° 25′ E.) to the south line of lot six (6), and thence west on the said south line to the place of beginning, containing three (3) acres more or less; and also a certain other piece bounded as follows, to wit: commencing on the east line of the said section twenty-one (21) at a point eighteen (18) chains and seven (7) links north of the southeast corner of the said lot number six (6); running thence north fifty-five degrees and twenty-seven minutes west (N. 55° 27′ W.) nine (9) chains and eight (8) links; thence north thirty-four degrees and thirty-three minutes east (N. 34° 33′ E.) thirteen (13) chains and nineteen (19) links to the said east line of section twenty-one (21), and thence south on the said east line to the place of beginning, containing six (6) acres more or less, as the said pieces are delineated on the map or plat attached to the report of the said commissioners, with the hereditaments and appurtenances, should be and was vested in him the said John H. Tweedy, in severalty, to be had, held, and enjoyed by the said John H. Tweedy, his heirs and assigns forever.

And it was further ordered, adjudged, and decreed that the part or allotment of the said premises set apart, allotted and assigned by the said commissioners to the said Joel Parker, defendant, as for his part and share, according to the said interest of an undivided one-half as the same hath been ascertained and determined by this court, and more particularly described in the said report as follows, to wit: commencing on the north line of the said section

twenty-one (21) in township seven (7) north, of range twenty-two (22) east, twelve (12) chains west of the northeast corner thereof; running thence south seventeen (17) chains and fifty-six (56) ; thence south forty degrees west (S. 40° W.) five (5) chains and fifty-two and one-half (52½) links; thence south thirty-nine degrees and forty-five minutes east (39° 45′ east) twelve chains and fifty-five and one-third links; thence south thirty-four degrees and thirty-three minutes west (S. 34° 33′ W.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-nine degrees and forty-five minutes east (S. 39° 45′ E.) one hundred and forty-seven and one-half (147½) feet; thence south thirty-four degrees and thirty-three minutes west (S. 34° 33′ W.) five (5) chains and fifty-eight (58) links to the south boundary of the said northeast quarter section; thence west along the said south boundary ten (10) chains and nineteen links to the southwest corner of lot number six (6); thence north on the west line of the said lot number six (6) twenty (20) chains to the northwest corner thereof; thence west three (3) chains and ninety-one and one-half (91½) links; thence north forty-four degrees and thirty-five minutes east (N. 44° 35′ E.) five (5) chains and fifty-seven (57) links; thence north thirty-nine degrees and forty-five minutes west (N. 39° 45′ W.) to the Milwaukee river; thence northwardly along the Milwaukee river to the north boundary line of the said section twenty-one (21); and thence east along the said north boundary line seven (7) chains and thirty-four and one-third (34⅓) links to the place of beginning; containing thirty-seven and four hundred and ninety-seven thousandths (37 $\frac{497}{1000}$) acres more or less, as the said piece is delineated on the map or plat attached to the report of the said commissioners, subject to the rights and privileges hereinafter described, connected with and appurtenant to that portion of the said premises set apart to be sold and hereinafter more particularly described, with the hereditaments and appurtenances, should be and was vested in him the said Joel Parker, in severalty, to be had, held, and enjoyed by the said Joel Parker, his heirs and assigns forever. And it appearing that division and partition thereof amongst the persons interested could not be made without great prejudice to the owners, it was further ordered, adjudged, and decreed, that all that portion of the said premises described as follows, to wit: all the water-power on and appurtenant to the said tract of land of which partition is made as aforesaid, to wit: lots number one (1) and six (6) of section twenty-one (21) in township seven (7) north, of range twenty-two (22) east, with whatever may be convenient to the full and complete enjoyment of the same, being all the right to build or maintain on the said Milwaukee river, on the said land, any dam, such dam to be on the land herein decreed to be sold and hereinafter particularly described, together with the privilege of overflowing so much of the said land as is now overflowed or may hereafter be overflowed

by the water-power of the said river, with the dam raised to its present height; also the following piece, parcel, or lot of land bounded and described as follows, to wit: all that part of lot number one (1) in section number twenty-one (21) in township seven (7) north, of range twenty-two (22) east, bounded as follows: commencing on the present margin of the Milwaukee river at the point where the same is intersected by the south line of said lot number one (1); running thence easterly on the said south line eleven (11) chains and thirty-nine and one-half (39½) links; thence north forty-four degrees and thirty-five minutes east (N. 44° 35′ E.) five (5) chains and fifty-seven (57) links; thence north thirty-nine degrees and forty-five minutes west (N. 39° 45′ W.) three (3) chains and sixty-six (66) links to the margin of the said river; and thence in a southwesterly direction along the margin of the said river to the place of beginning, containing two and thirty-six hundredths ($2\ \frac{36}{100}$) acres more or less, with the hereditaments and appurtenances thereunto belonging, be sold by the sheriff of the county of Milwaukee, for cash at public auction to the highest bidder; that previous to the said sale the time and place of holding the same shall be advertised for six weeks successively, by posting a written or printed notice thereof in three public places in the city of Milwaukee, and by causing a copy of such notice to be printed and published once in each week in a newspaper published in the said city, and that the said sheriff report the same to this court, and pay into court, for the use of the parties interested, the proceeds of the sale less the taxed costs and the expenses of the sale, which he shall pay to the solicitors for the complainant, and take their receipt thereof.

Dated April 10, 1854. By the court.

LEVI HUBBELL.

May 1, 1854. Affidavits of Jerome R. Brigham, John P. McGregor, J. A. Lapham, O. H. Waldo, *Johua* Hathaway, and Franklin Ripley, jr., filed. Same day, now comes the said defendant Parker, by Wells and Brigham, his solicitors, and moves the court that the order heretofore entered, confirming the report of the commissioners herein, be vacated, and that the report be set aside, and that such other order be made herein as may be agreeable to equity and law, for reasons apparent of record in this cause, and for reasons contained in the affidavits of O. H. Waldo, J. A. Lapham, J. Hathaway, J. Ripley, jr., Jno. P. McGregor, and J. R. Brigham, which are filed herewith, and for the following reasons, to wit:

1st. Because the commissioners appointed herein have not designated the several shares and portions of the different parties by posts, stones, or other permanent monument.

2d. Because their report does not describe the lands divided and the shares allotted with sufficient certainty.

3d. Because said commissioners have not divided the real estate in their report mentioned, alloting to the respective parties herein the several portions, quality and quantity respectively considered, according to the respective rights and interest of the parties as adjudged and decreed by this court, but that said division is manifestly unfair and against the rights of the defendant.

4th. Because, by said division this defendant does not receive either in quantity, quality, or value, one-half of the lands divided by said commissioners, but receives less than one-half of said land.

May 3, 1854. On motion of Wells and Brigham, solicitors for the defendant, Joel Parker, it is considered and ordered, that the order confirming the report of the commissioners in this cause heretofore entered be, and the same is hereby vacated, for the purpose of letting the defendant Parker have an opportunity to oppose the confirmation.

May 2, 1854. By the court.

LEVI HUBBELL.

May 12, 1854. And now come the complainants by their solicitors, Brown & Ogden, and move the court that the commissioners appointed to make partition in the above entitled cause, or in case of absence of part of the number any one of them, be required to make return to this court of the reasons for dividing said land as it was reported by them, and as to the fact of an offer on the part of said defendant Parker, for a different partition. Thereupon it is ordered by the court, that the said commissioners, or any one of them, report to this court in compliance with said motion.

May 13, 1854. Ordered that both parties herein have six days from the date of this order in which to take testimony to be read on the hearing of the motion to set aside the commissioners' report herein, and that such testimony may be taken by either party before the commissioner of this court, or before such other person as parties may agree on, on notice of 12 hours to the other party.

May 13, 1854. By the court.

LEVI HUBBELL.

Same time, stipulation filed in the words and figures following, to wit: It is hereby stipulated between the parties hereto, that the affidavit of John P. McGregor, hereto filed in this matter, may be read as testimony on the hearing of the motion to set aside the commissioners' report herein.

BROWN & OGDEN, *Sol'rs for Compl'ts.*
WELLS & BRIGHAM, *for Parker.*

June 3, 1854. Depositions filed. Same day come the parties by their solicitors, and the said motion to set aside report coming on for argument, and the proofs being read, and motion argued and submitted, it is ordered by the court that said motion be over-

ruled and denied. Same day, on reading the report of the commissioners in this matter, it is ordered by the court that the report be again referred to the commissioners, and that they be and are hereby instructed to cause to be placed at each of the corners in the boundary lines described in said report, wooden posts, set in the ground at least two feet, and of sufficient size to designate such corners, and that they amend their report in such particular and file the same at the next special term of this court. Dated June 3, 1854.

By the court.

LEVI HUBBELL.

January 10, 1855. Affidavits of A. L. Kane and W. P. Huntington filed. January 11, 1855, affidavits of Joseph Clark and C. K. Wells filed; also bill of Trowbridge for survey of lots 1 and 6 of sec. 21, T. 7, R. 22, with consent of parties to tax the same, &c. Same day, to wit, January 11, 1855, special term, come the parties by their solicitors, and on motion of complainants it is ordered by the court that an affidavit of J. R. Brigham to be procured may be filed as of this date. Same time, on reading and filing the affidavits of A. L. Kane, W. P. Huntington, Joseph Clark, and C. K. Wells, and it appearing to the satisfaction of this court that all of the commissioners appointed in this cause have removed from the State and cannot act further in this cause; and it further appearing that W. P. Huntington was the surveyor originally employed by said commissioners to make the survey of the premises divided, and that he has established posts, as required by the order of this court, upon the corners fixed by the said commissioners in their said report and survey—said order having been substantially complied with, further compliance therewith having become impossible by reason of the removal of said commissioners from the State—it is, upon motion of Brown & Ogden, solicitors for the complainant, ordered, directed and decreed that the order of confirmation and decree heretofore made by this court, and bearing date on the 10th day of April, A. D. 1854, be and the same is hereby restored, ratified, and confirmed, and that said order and decree do stand forever valid and effectual between the parties; and that said acts of the said Huntington, establishing posts as aforesaid, be and the same are hereby accepted and ratified, as a compliance with order of this court made on June 3d, A. D. 1854, directing the same to be done.

Dated January 11th, 1855. By the court.

LEVI HUBBELL.

January 23, 1855. And now comes the said defendant Joel Parker by his solicitors, and appeals from the decision of this court to the supreme court of the State of Wisconsin, in the order and

decree of this court entered January 11, 1855, whereby, among other things, it is ordered and directed and decreed by this court that the order of confirmation and decree theretofore made, and bearing date the 10th day of April, A. D. 1854, be and thereby was restored, ratified and confirmed, and that said order and decree do stand forever valid and effectual between the parties, and from all interlocutory decrees and orders previous to the final order of this case entered within fifteen days heretofore, and from any final order entered within two months heretofore, and hereby enters his appeal from the same.

Dated January 22, 1855.

J. DOWNER & WELLS & BRIGHAM,
for Joel Parker.

Same time. "Let Joel Parker, the party appealing from the order of this court entered January 11, 1855, give bond as required by law, in the sum of two hundred and fifty dollars.

"Dated January 22, 1855.

"LEVI HUBBELL, *Judge, &c.*"

Same time, power of attorney from Joel Parker to Charles K. Wells filed; also bond of Joel Parker as principal, and Charles K. Wells as surety, filed.

February 15, 1855, affidavit of Jerome R. Brigham filed. February 23, 1855, record to supreme court made up and mailed to cl'k of sup. court February 28, 1855. February 23d, 1856, the original papers in this cause received from supreme court and placed on file; also remittitur from said supreme court, as follows:

This cause came on to be heard on appeal from the decree of the circuit court of Milwaukee county, and was argued by counsel. On consideration whereof, it is by the court now here considered, ordered, adjudged, and decreed, that so much of the decree of the circuit court of Milwaukee county in this cause, made on the 11th day of January, A. D. 1855, as confirms and ratifies the report of the commissioners and the partition made by them, be and the same is hereby affirmed, and so much of said decree as accepts and ratifies the acts of W. P. Huntington in establishing posts, &c., be and the same is hereby affirmed; and it is further ordered and decreed, that this cause be remanded to the said circuit court for the appointment of new commissioners to establish posts and monuments according to the partition and divisions made, and that each party pay half of the costs of this appeal to be taxed.

May 17, 1856, regular term. On motion of Brown and Ogden, solicitors for the complainant, it is ordered that W. P. Huntington, of Dane county, Joseph Clark and Frederick Schumacher, of Milwaukee county, be and they hereby are appointed commissioners to establish posts and monuments at the corners designated in the report of the commissioners of the portions of the premises allotted

, or mil-
missioners
ated in the
ses allotted

and set apart by the said report, and that the said commissioners have authority to employ or empower a surveyor for that purpose.

Dated May 15th, 1856.

By the court. LEVI HUBBELL.

Sept. 6, 1856. And now come the commissioners appointed by this court to make partition of the premises mentioned in this cause and filed this said report, in the words and figures following, to wit:

[*Here follows map—see original, page* 125.]

We, the undersigned, commissioners appointed to establish posts and monuments at the corners designated in the report of the commissioners of the portion of the premises allotted and set apart by the said report, after mature and thorough investigation, made the following report: That we have found stakes marked No. 1 and 2 on the accompanying plat or map, and re-established the same; also that we have found and re-established stakes at the corners marked 3, 4, and 5 on the accompanying plat or map. That we have not found a stake at corner marked No. 6, but that we have designated and fixed the corner by running from stake No. 5 south 34° 33′ W. one hundred and forty-seven feet and one-half (147½ feet). That we have not found stake at corner marked No. 7, but have designated and fixed the same by running from corner No. 6 south 39° 45′ E. one hundred and forty-seven and one-half feet (147½ ft.) That we have not found stake at corner marked No. 8, but that we have designated and fixed the same by running from stake No. 5 south 39° 45′ E. one hundred and forty-seven and one-half feet (147½ feet). That we have set stake No. 9 on the line bearing from stake No. 8 S. 38° 25′ E., it being not at a corner, but on the line which separates one of the lots of J. H. Tweedy from the portion of C. J. Kane. That we have not found stake at corner No. 10, but have established it by measuring from the centre ¼ section corner eastward. That we have not found stake at corner No. 11, but have established the same by running a line from stake No. 12 on a course of south 55° 27′ E. to a point where said line intersects north and south line between section 21 and 22. That we have found stakes numbered 12 and 13. That we have not found stake at corner No. 14, which is the ⅛ section corner, but that the hole where it stood has been identified and the corner established by measurement from the centre ¼ stake eastward in section 21. That we have not found any stake at corner No. 15, but that the hole where it had stood has been identified, and the stake we set by running from stake No. 17 south 3 $\frac{96}{100}$ chains.

That we have not found stake at No. 16, but have identified the hole where it stood and re-set the same by running from stake No. 15 west 3 $\frac{91}{100}$ chs. That we have found stake No. 17, and thence have run a line towards the river on the course of N. 39° 45′ W. on the boundary line between the water-power and J. Parker's tract, and marked the point where said line intersects one of the upper timbers of the mill-dam by a cut with an axe on said timber. And so we do certify and report that we have placed wooden monuments 4 inches square at each of the said corners mentioned in the report of the commissioners, as the same are designated on the accompanying plat or map, which is made a part of this our report, by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, and that we have taken bearings at the most important points, which are as follows:

At No. 2, white oak 25 in. diameter, north 60° W. 57 ft. 4 in.
No. 3, elm 20 in. diameter, south 31¾ E. 129 ft. 10 in.
No. 4, black oak 5½ " N. 30¾ E. 100 ft. 8 in.
No. 5, black oak 11 " S. 29⅓ E. 11 ft. 4 in.
No. 9, white oak 13 " N. 35¼ W. 130 ft. 6 in.
No. 10, " 5 " N. 76° 35′ E. 164 ft. 2 in.
No. 11, " 17 " N. 41¾ W. 104 ft. 9 in.
No. 12, " 5½ " N. 70¼ E. 86 ft. 9 in.
No. 12, black oak 6 in. " S. 49½ W. 81 ft. 7 in.
No. 13, " 18 in. " N. 79½ E. 45 ft.
No. 14, white oak 14 " S. 25⅓ E. 24 ft. 6 in.

The above bearings are taken with compass adjusted at a variation of 6° 16′ E., and the distances are from centre of statue to centre of bearing-tree.

Commissioners' Fees.

To F. Schumacher 2 day, *a* $10 a day	$20 00
Two assistants 1 day	3 00
J. Clark 6 days, *a* $10	60 00
W. P. Huntington, including expenses, 30, 24, 24, 6	84 00
Two men	5 00
Total	$172 00

Milwaukee, Sept. 4th, 1856.

JOSEPH CLARKE,
WILLIAM P. HUNTINGTON,
FREDERICK SCHUMACHER.

Same day, to wit, Sept. 6, 1856, special term. On reading and filing the report of Frederick Schumacher, Joseph Clarke, and William P. Huntington, commissioners appointed to establish posts and monuments, &c., and on motion of Brown and Ogden, solicitors

for the complainants, it is ordered that the said report be, and the same hereby is, confirmed. Brown and Ogden, sol'rs for compl't.

Dated Sept. 6th, 1856. By the court.

LEVI HUBBELL.

October 29, 1856, comes the sheriff of Milwaukee county, and files his report of the sale of the premises authorized to be sold in the decree in this cause, in the words and figures following, to wit:

To the Circuit Court of Milwaukee county.—In Equity.

In pursuance and in virtue of a decretal order of this court, on the chancery side thereof, made in the above entitled cause by the judge of said court, at a special term thereof, and bearing date the tenth day of April, the year 1854, by which it was, among other things, ordered, adjudged, and decreed that all and singular the premises mentioned in the said decree and hereinafter described be sold by or under the direction of the sheriff of the county, for cash; that the sale be made in the county where the said premises are situated; that said sheriff give public notice of the time and place of such sale by advertising a description of said premises for six weeks successively, once in each week, by posting a written or printed notice in three public places in the city of Milwaukee, and by causing a copy of such notice to be printed and published once in each week for six weeks successively in a newspaper published in the said city, and that the said sheriff report the same to the court, and pay into court, for the use of the parties interested, the proceeds of the sale less the taxed costs and the expenses of the sale, which he shall pay to the solicitors for the complainant and take their receipts therefor, (after deducting his own fees and disbursements in and about such sale;) and also that the said sheriff execute a deed to the purchasers of said premises on the said sale—I, Samuel O. Conover, the subscriber, the sheriff of the county of Milwaukee aforesaid, in the State of Wisconsin, do certify and report, that at the request of the solicitors for the said complainants, and in the execution of the said decretal order, I advertised said premises to be sold by me at the court-house in the city of Milwaukee, at 2 o'clock in the afternoon on the eighteenth day of October, 1856; that previous to said day of sale I posted printed notices of said sale in three public places in said city of Milwaukee, and also by publishing a notice of said sale in the Daily News, a public newspaper printed and published in said city, once in each week for six successive weeks, which said notice so posted up and published contained a full description of the premises so to be sold; that at 2 o'clock in the afternoon on said 18th day of October, 1856, the day and hour on which the said premises was so advertised to be sold, I attended at the time and place so as aforesaid fixed for said sale, and exposed said premises for sale at public auction to the highest bidder, and the said premises were then and

there fairly struck off as follows, to wit: to Alonzo L. Kane, for the sum of five thousand and seventy dollars, he being the highest bidder therefor, and that being the highest sum bidden for the same. And I further certify and report that I have executed, acknowledged, and delivered to said purchaser a deed for the said premises, and have paid over or disposed of the purchase money or proceeds of said sale as follows, to wit: I have paid to the solicitors for the complainant the sum of $442 28, being the amount of costs as taxed, and have taken a receipt therefor, which is hereto annexed. I have retained in my hands the sum of $25 65, being the amount of my fees, commissioners and disbursements, in said sale, as will appear by reference to the statement hereto annexed, and to which reference is made; and the balance of the proceeds of said sale, amounting to the sum of $4,627 72, I have paid into court, as per receipt of the clerk of said court herein. And I further certify and report, that the premises so sold and conveyed as aforesaid were described in said decretal order and in the deed so executed by me as aforesaid as follows, to wit: "all the water-power on and appurtenant to the said tract of land of which partition is made as aforesaid, to wit: lots numbered one (1) and six (6) of section twenty-one (21), in township seven (7) north, of range twenty-two (22) east, with whatever may be convenient to the full and complete enjoyment of the same, being all the right to build or maintain on the said Milwaukee river, on the said land, any dam, such dam to be on the land herein decreed to be sold, and hereinafter particularly described, together with the privilege of overflowing so much of the said land as is now overflowed by the water of the said river, with the dam raised to its present height; also the following parcel or lot of land bounded and described as follows, to wit: all that part of lot number one (1) in section number twenty-one (21), in township seven (7) north, of range twenty-two (22) east, bounded as follows: commencing on the present margin of the Milwaukee river at the point where the same is intersected by the south line of said lot number one (1); running thence easterly on the said south line eleven (11) chains and thirty-nine and one-half (39½) links; thence north forty-four degrees and thirty-five minutes east (N. 44° 35′ E.) five (5) chains and fifty-seven (57) linkks; thence north thirty-nine degrees and five minutes west (N. 39° 45′ W.) three (3) chains and sixty-six (66) links to the margin of the said river, to the place of beginning, containing two and thirty-six hundredths ($2\frac{36}{100}$) acres more or less, with the hereditaments and appurtenances thereunto belonging."

Dated Sheriff's office, Oct. 27, 1856.

S. S. CONOVER, *Sheriff.*

Received, Milwaukee, October 27, 1856, of Samuel S. Conover, sheriff of Milwaukee county, who made sale of the premises under and by virtue of the decretal order mentioned in the annexed re-

port, the sum of $442 28, being the amount of costs in the cause in which said decretal order was rendered, as taxed, which costs are paid to us by said sheriff under and by virtue of the premises of said decree.

BROWN & OGDEN,
Solicitors for Complainant.

Received from Samuel S. Conover, sheriff of Milwaukee county, who made sale of the premises under and by virtue of the decretal order mentioned in the annexed report, the sum of forty-six hundred and twenty-seven .72 dollars ($4,627 72), which sum being part of the proceeds of the sale of said premises, is received by me under and by virtue of the provisions of said decree, being the whole amount of the proceeds of said sale (less taxed costs and sheriff's fees and disbursements on the said sale), as appears from the report of said sheriff of said county, and to which this receipt is hereto annexed.

MATHEW KEENAN,
Clerk Circuit Court Mil. Co.

Note of sheriff's fees, commissioners, &c., in and about the sale mentioned in the annexed report.

Fee for making sale	$10 00
Drawing, acknowledging, &c., deed	3 00
Making report of sale annexed	3 00
For drawing notice of sale	1 00
Advertising fee and affid't	8 65
	$25 65

Same time, affidavits of publication and of posting notices of sale filed. Same day, to wit:

October 29, 1856, regular term. Upon reading and filing the report of Samuel S. Conover, sheriff of Milwaukee county, by which it appears that, pursuant to the final decision in partition in this cause, he has sold the portion of the premises of which partition has been made, allotted and set apart by the commissioners, the same not being capable of division without great injury to the parties interested, to Alonzo L. Kane, for the sum of five thousand and seventy dollars, and that he has executed and delivered to the said Kane a conveyance of the said premises, and has paid to the solicitors for the complainant the sum of four hundred and forty-two $\frac{28}{100}$ dollars, being the taxed costs in the said suit, and has paid into court, pursuant to said final decree, the sum of four thousand six hundred and twenty-seven $\frac{72}{100}$ dollars, being the remainder of said purchase money, on motion of Brown & Ogden, solicitors, it is ordered that the said report and all things therein contained, and the said sale and the said deed, be and the same hereby are

confirmed. And it is further ordered that the clerk of this court pay over to the said parties, or to their solicitors, the said sum so paid into court by the said sheriff, as follows:

To the said Charles J. Kane the sum of seventeen hundred and thirty-five $\frac{40}{100}$ dollars, being three-eighths thereof; to the said John H. Tweedy the sum of five hundred and seventy-eight $\frac{46}{100}$ dollars, being one-eighth thereof; and to the said Joel Parker the sum of twenty-three hundred and thirteen .86 dollars, being one-half thereof; and that he take their receipts therefor. By the court.

ALEX. W. RANDALL.

Nov. 6, 1856. Receipt filed as follows:

Received of M. Keenan, clerk, &c., five hundred and seventy-eight $\frac{46}{100}$ dollars, being the amount directed to be paid to John H. Tweedy by an order of the court in this suit entered October 29, 1856; and also the sum of seventeen hundred and thirty-five $\frac{40}{100}$ dollars, being the amount directed by the order to be paid to Charles J. Kane.

BROWN & OGDEN,
Solicitors for John H. Tweedy and Charles J. Kane.

The counsel for the defendant then produced and read in evidence the following record, to wit:

Pleas before the Honorable Levi Hubbell, judge of the second judicial circuit, State of Wisconsin, and presiding judge of the circuit court in and for the county of Milwaukee, in said State, at a term of said court begun and holden at the court-house in the city of Milwaukee on the third Monday of September, A. D. 1850.

Egbert Mosley, esq., sheriff. Henry K. White, clerk.

CHARLES J. KANE, JOHN H. TWEEDY, and JAMES S. BROWN,
vs.
CARL BECMAN, JOEL PARKER, BENJAMIN F. ADAMS, and others unknown.

Be it remembered, that heretofore, to wit, on the 9th day of August, A. D. 1850, come the said complainants by their solicitors, Messrs. Holliday, Brown & Ogden, and file in the office of the clerk of the circuit court aforesaid their certain precipe and bill of complaint, in the words and figures following, to wit:

Circuit Court of Milwaukee county.

CHARLES J. KANE, JOHN H. TWEEDY, and JAMES S. BROWN,
vs.
CARL BECMAN, JOEL PARKER, and BENJAMIN F. ADAMS, and unknown owners.
} In Chancery.

Please issue a subpœna against the defendants above named, returnable on the 23d day of August, A. D. 1850.

To the clerk, &c.

HOLLIDAY & BROWN,
Sol'rs for Comp'ts.

T. L. O., *of Counsel.*

STATE OF WISCONSIN.

In Chancery.

To the circuit court of Milwaukee county, Charles J. Kane, John H. Tweedy, and James S. Brown, of the city of Milwaukee, and citizens of the State of Wisconsin, bring this their bill against Carl Becman, of St. Louis, an alien, and Joel Parker, of Massachusetts, and a citizen of the State of Massachusetts, Benjamin F. Adams, whose residence is unknown to your orators, and the unknown owners of the west half of the south half of the northeast quarter of section number twenty-one, in township No. seven north, of range number twenty-two east.

And thereupon your orators complain and say, that they are seized of an estate of inheritance in the fee simple in the undivided nine sixteenths of the said west half of the south half of said northeast quarter, in said county of Milwaukee, containing forty acres, the interest of your orators aforesaid being equal to twenty-two and one one-hundredth acres; that your orators are seized of the said interest as tenants in common with the said Carl Becman and others, unknown owners of an interest in said premises, and that the said Carl Becman is seized of an estate of inheritance in the fee simple in the undivided three sixteenths of said premises, and that your orators are unable to ascertain and do not know who are the owners of the remaining one-fourth of said premises, but the record in the office of the register of deeds of said Milwaukee county shows a title to the said one-fourth in the said Benjamin F. Adams, but your orators are informed and believe that he has sold said interest to persons unknown.

And your orators further show, that the said Joel Parker claims some interest in said quarter, either by purchase or otherwise, from the said Adams; but whether he has such interest or not, and as to the extent of his interest, your orators do not know, nor have they been able to ascertain.

Your orators further show, that it is greatly for their interest to have said premises divided among the several tenants in common, and that the said interest of your orators be set off to them jointly as one interest, and that your orators are unable to effect a division of said premises without the aid of this court, as by statute provided.

Your orators further show that said premises are of great value, to wit, of the value of about four thousand dollars.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed,

and that they may, upon their several and respective corporal oaths, and according to their best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as, by note hereunder written, they are severally required to answer—that is to say:

1st. Whether you are seized of a good title to any portion; and if so, how much of said premises? Set forth how you acquired title.

2d. Whether you are so seized as tenants in common?

And that commissioners be appointed by this court to make partition of said premises; and that partition of said premises may be made according to the statute in such case made and provided, and according to the rules and practice of this court (if such premises shall be found devisable), among the several owners thereof according to their respective shares, and that your orators hold such part of said land as may be allotted to them by commissioners appointed by this court for that purpose, in severalty and apart from the said defendants; and for such other or further relief in the premises as may be agreeable to equity and good conscience.

May it please your honor, the premises considered, to grant unto your orators the most gracious writ of subpœna to issue out of and under the seal of this honorable court, directed to the said Carl Becman, Joel Parker, Benjamin F. Adams, and to said unknown owners, therein and thereby commanding them and each of them, at a certain time and under a certain penalty therein to be specified, to be and appear before this honorable court, and then and there to stand to, abide by, and perform such order, direction, and decree in the premises as to your honor may seem meet, &c.

CHARLES J. KANE.
HOLLIDAY & BROWN, *Sol'rs.*

THOMAS L. OGDEN, *of Counsel.*

STATE OF WISCONSIN,
Milwaukee county, ss.

Charles J. Kane, being duly sworn, deposeth and saith, that he has read the foregoing bill by him subscribed, and knows the contents thereof, and that the same are true, according to the best of his knowledge, information, and belief.

CHARLES J. KANE.

Subscribed and sworn to before me this 5th day of August, 1850.
H. W. TENNEY, *Court Com.*

Note.—The defendants, Carl Becman, Joel Parker, and Benjamin F. Adams, are required to answer interrogatories number 1 and 2.

HOLLIDAY & BROWN,
Sol'rs for Compl'ts.

1445

Thereupon a writ of subpœna issued out of and under the seal of said court, in words and figures following, to wit:

STATE OF WISCONSIN,
Circuit Court for the county of Milwaukee, ss.

The State of Wisconsin to Carl Becman, Joel Parker, Benjamin F. Adams and others, whose names are unknown, greeting:

[L. S.]

We command you that you personally appear before the judge of the second judicial circuit in our court of chancery in and for the county aforesaid, on the twenty-third day of August instant, wheresoever the said court shall then be, to answer to a bill of complaint exhibited against you in our said court by Charles J. Kane, John H. Tweedy, and James S. Brown, and to do further and to receive what our said court shall have considered *it* that behalf; and this you are not to omit under a penalty of two hundred and fifty dollars.

This process is directed to the sheriff of the county of Milwaukee, who is hereby commanded to serve the same upon the said Carl Becman, Joel Parker, and Benjamin F. Adams, according to law, if to be found in his county, and due return thereof make.

Witness the Honorable Levi Hubbell, judge of the second judicial circuit of the State of Wisconsin, at Milwaukee, the ninth day of August, in the year of our Lord one thousand eight hundred and fifty.

HENRY K. WHITE, *Register*.

HOLLIDAY & BROWN, *Solicitors*.
T. L. OGDEN, *of Counsel*.

Afterwards, to wit, August 13th, 1850, comes Egbert Mosley, esq., sheriff of the county aforesaid, and returns to the office of the clerk of the court aforesaid the writ of subpœna to him in this behalf directed, with his endorsement of same thereon in words and figures following, to wit: "Personally served the within subpœna, by delivering a copy of the within to within named Carl Becman this 12th day of Aug., 1850. Joel Parker and Benjamin F. Adams not found. Fees $1 44.

"EGBERT MOSELY, *Sheriff*.
"By C. J. RICHARDS, *Under Sheriff*."

Afterwards, to wit, September 3d, 1850, affidavit of Charles J. Kane filed. Same time, order filed as follows:

Circuit Court of the county of Milwaukee.

CHARLES J. KANE, JOHN H. TWEEDY, and JAMES S. BROWN, vs. CARL BECMAN, JOEL PARKER, BENJAMIN F. ADAMS, and unknown owners. } In Chancery.

[REC. CCXIX, D. T., 1857.]—11

Before the Honorable Levi Hubbell, judge of the circuit court within and for the county of Milwaukee, in the State of Wisconsin, at chambers, August 27th, A. D. 1850.

It appearing to the satisfaction of this court, by the affidavit of Charles J. Kane, that the said Joel Parker is an absent defendant and resides out of this State, to wit, in the State of Massachusetts, and cannot be found in this State, and that the said Adams resides out of this State and cannot be found therein; and it further appearing to the satisfaction of this court that the said complainants filed their bill in this cause for the partition of the following premises, to wit, the west half of the south half of the northeast quarter of section No. twenty-one in township No. seven north, of range No. twenty-two east (in the first ward of the city of Milwaukee), and that there are parties having an interest in said premises, who are unknown: it is therefore, on motion of Holliday, Brown & Ogden, solicitors, ordered that the said defendants, Joel Parker and Benjamin F. Adams, and the said unknown owners and all parties interested in said premises above described, appear and answer the bill in this cause by the second day of December, A. D. 1850, or that such bill will be taken as confessed by them.

It is further ordered that a copy of this order be published in the Milwaukee Sentinel and Gazette, a paper printed in the said city of Milwaukee, in said county of Milwaukee, for six weeks, once in each week, successively, the first publication to be within twenty days from the date of this order.

By the court.

LEVI HUBBELL.

November 29, 1850, comes said defendant Carl Becman, by Waldo & Ody, his solicitors, and enters his appearance.

Same time, separate answer of Carl Becman filed, as follows:

THE STATE OF WISCONSIN.

In Chancery.

The several answer of Carl Becman, one of the defendants, to the bill of complaint of Charles J. Kane, John H. Tweedy, and James S. Brown, complainants, against this defendant, and Joel Parker, Benjamin F. Adams, and the unknown owners of the west half of the south half of the northeast quarter of section number twenty-one, in township number seven north, of range number twenty-two east, defendants.

This defendant, now and at all times saving and reserving to himself all advantage and benefit of exception to the errors and imperfections contained in the said bill of complaint of the said complainants, for answer thereto, or to so much thereof as he is advised it is material for him to make answer unto, he, answering, admits, that the rights and interests of the several parties complainants

named in the bill of complaint, and of this defendant, to the lot or parcel of ground therein mentioned and described, are truly set forth and stated in such bill; and this defendant submits to such decree as this court may make in the premises for a partition of such premises, and for such other or further relief as may be agreeable to equity and good conscience.

CARL BECMAN,
By his Attorney in fact, JOSEPH ODY.

WALDO & ODY,
Sol'rs for Deft.

STATE OF WISCONSIN,
County of Milwaukee, ss.

Joseph Ody, of the city of Milwaukee, in said county, being sworn, saith that Carl Becman, the defendant in the foregoing answer, is now, as this deponent verily believes, absent from the city and county of Milwaukee, viz., on a voyage to St. Louis, in the State of Missouri, he having left the city of Milwaukee for that place on or about the fifteenth day of November inst.; that this defendant is the attorney in fact of the said Carl Becman by virtue of a special power and authority given to him in relation to the matters for which this suit is brought; that this deponent has read the foregoing answer, and knows the contents thereof; and that this deponent has information as to all the matters stated therein, and from such information believes such matters to be therein truly stated and such answer to be true.

JOSEPH ODY.

Subscribed and sworn to before me this twenty-ninth day of November, A. D. 1850.

O. H. WALDO,
Notary Public in Milwaukee county.

Jan'ry 27, 1851. Separate answer of defendant, Joel Parker, filed as follows:

Circuit Court of the county of Milwaukee.

Charles J. Kane, John H. Tweedy, and James S. Brown vs. Carl Becman, Joel Parker, Benjamin F. Adams, and unknown owners, for the partition of the west half of the south half of the northeast quarter of section number twenty-one, in township number seven north, of range number twenty-two east.

Joel Parker, one of the defendants in this cause, makes answer and says that he claims to be the owner, legally or equitably, of one undivided half of the premises described in the plaintiff's bill, as tenant in common with whoever may be the owners of the other half; and in answer to the part of the interrogatories in said bill requiring him to set forth how he acquired title, he sets forth the

same according to the best of his knowledge, information and belief, as follows, viz: that one William E. Dunbar, late of Rockford, in the State of Illinois, deceased, purchased of the United States, through the proper land office, on the fourth of September, A. D. 1855, the northeast quarter of section twenty-one in township seven north, of range twenty-two east, of which the premises in question are a part; that this purchase was made under some agreement or understanding with Richard Montague, now of said Rockford, by which said Montague was to furnish funds to make said purchase, and to be equally interested in the purchase; that subsequently, in the year 1836, said Dunbar gave to said Montague a deed, intended to convey, and which this defendant believes did convey, one undivided half of said quarter section; but the particular language by which it was conveyed this defendant is unable to state, as the said deed has since, as he is informed and believes, been surrendered as hereinafter mentioned; that some time in the summer of the year 1846, said Montague made a contract of sale to John P. Chapin, of Chicago, of one fourth of his interest in said land, and gave said Chapin a bond for a deed upon his compliance with certain conditions therein named, in which, as this defendant is informed, the land was described as lot number one, and the south half of the northeast quarter of section No. 21 in township No. 7 north, of range 22 east, from which this defendant is induced to believe that such was the description of the premises in the deed then held by said Montague; that subsequently, by an arrangement between said Dunbar and Montague, the latter made a purchase of the former of a certain claim, and agreed to give him therefor one-fourth of said quarter section numbered twenty-one; and as the deed from Dunbar had never been recorded, it was agreed between them that it should be surrendered, and that a new deed should be made from Dunbar to Montague of one-fourth of said tract instead of one-half; and that on the eighteenth day of December, A. D. 1837, a deed was made in pursuance of that agreement by said Dunbar and his wife to Montague, in which, by mistake and accident, the premises were described as "one equal undivided fourth part of the following described parcel or tract of land, viz: lots one (1) and six (6), being that part of the northeast quarter lying east of Milwaukee river in section number twenty-one, in township number seven north, of range twenty-two east of the fourth principal meridian, in Milwaukee county and Territory of Wisconsin;" that this deed was accepted by said Montague under the belief that it conveyed one-fourth of the whole quarter section, and that the other was given up, and this defendant understood that all of said quarter section lies east of the Milwaukee river, part of it bounding thereon.

And this defendant further answers, that said Chapin not having fulfilled the conditions expressed in the bond from Montague to

him, an arrangement was made between them by which said Montague was to convey to Chapin one-sixteenth of the tract instead of one-eighth, and a deed was thereupon executed by said Montague and wife, dated January thirteenth, A. D. 1838, in which deed the tract of land was described as in the bond previously given; that on the twentieth day of June, A. D. 1839, said Chapin mortgaged to this defendant the premises so conveyed to him, and on the eighteenth day of May, A. D. 18 , he conveyed the same to this defendant by an absolute deed, said deed containing a description of the premises similar in substance to that contained in the deed of said Montague to him; that this business was transacted between said Chapin and an agent of this defendant, and that this defendant understood and verily believed that said deeds conveyed to him a good title to one sixteenth of the whole quarter section.

And this defendant further answers, that said Richard Montague and his wife, on the twenty-fifth of June, A. D. 1840, executed a mortgage to Phineas Fisk, the lands therein described being three-sixteenths of lots one and six, being that part of the northeast quarter of section twenty-one, in township number seven north, of range twenty-two east, lying east of Milwaukee river; and on the twenty-seventh day of October, A. D. 1842, said Montague, by a deed with warranty, conveyed the same premises by a similar description, intending, as this defendant believes, to convey three-sixteenths of the whole quarter section, and supposing that he did so.

And this defendant further answers, that afterwards said Phineas Fisk died at Keene, in New Hampshire, (but this defendant is not now able to state the date of his death,) leaving Mary H. Edwards, wife of Thomas M. Edwards, Julia A. Densmore, wife of William Densmore, Phineas S. Fisk, and Francis or Frank S. Fisk, his children and heirs-at-law, and this defendant believes left a will, by which his title to the property conveyed to him by said Montague was devised to his said children, but they may have taken it as heirs-at-law; that said Phineas S. Fisk afterwards, on the thirtieth day of May, A. D. 1848, conveyed to said Thomas M. Edwards an undivided quarter of the premises conveyed to his father by a similar description, and that Thomas M. Edwards and Mary H. his wife, in his and her right, William Densmore and Julia A. his wife, in her right, and said Frank S. Fisk, by their deed of November eleventh, A. D. 1850, conveyed to this defendant three-sixteenths of lots one and six in said northeast quarter section twenty-one, and by another deed of the same date remised, released, and quitclaimed to him all the right, title and interest, claim and demand, they had in and to the west half of the south half of said quarter section, and this defendant says that under this claim of conveyances he claims one undivided quarter of said west half of the south half of said quarter section twenty-one; but whether the deed of said Dunbar to said Montague will be held

by this honorable court sufficient in law to convey the same, so that the legal title thereto has passed to him, this defendant cannot know, and he therefore proposed with all convenient despatch to file in this honorable court his bill in equity for the purpose of having his title ascertained, and of having said deed from said Dunbar to said Montague reformed if need be, in order that the same may convey what it was intended to convey, and of having the title of this defendant to said one-fourth of said quarter section established and confirmed.

And this defendant claims that the said Kane, Tweedy, Brown, and Carl Becman, took any title which they have under the said William E. Dunbar, or his heirs or administrators, chargeable with notice of the title derived from said Dunbar through said Montague, and of the intention of said Dunbar to convey one-fourth part of the whole of said quarter section to said Montague as aforesaid, and subject to the rights, legal and equitable, of the said Montague and his assigns.

And this defendant further says, that as to one other fourth part of said quarter section, the said Dunbar conveyed the same to one Oliver Holman by deed dated June sixteenth, A. D. 1836; that said Holman conveyed the same to Benjamin F. Adams, by deed dated February sixteenth, A. D. 1843; that said Adams, holding one-half thereof in trust for Charles Stratton, conveyed the same to him by release and quitclaim, June tenth, A. D. 1847, and said Stratton conveyed the same to this defendant on the same day; and that said Adams, on the tenth day of December, A. D. 1847, conveys the other half, being one undivided eighth of the whole quarter section, to this defendant; under which chain of conveyances he claims to hold the title to said other undivided quarter.

And this defendant further says, that from the time of the conveyances by said Dunbar to said Holman and said Montague as aforesaid, said Dunbar, as he believes, never claimed to own more than one undivided half of said quarter section, nor claimed to own a greater share of the west half of the south half than he had of any other part of said quarter section; that said Dunbar from time to time paid taxes upon one-half of said quarter section, and no more; that the other owners before mentioned from time to time caused the taxes legally assessed upon the other half to be paid, with the exception of the county taxes for the year 1845, hereinafter mentioned, and that there was no supposition, so far as this defendant had any knowledge or belief, that the said Montague and Holman, and those claiming under them, were not entitled, through the conveyances aforesaid from said Dunbar, to one full half of said quarter section, until some time about the commencement of the year 1848, long after the decease of said Dunbar. And this defendant believes, that after said Dunbar's decease, and before any sale of any interest in said quarter section by any one representing his estate or his heirs, some question being made whether there was

not a mistake in the deed from Dunbar to Montague, Bela Shaw, who acted in the administration of said estate, and Jason Marsh, an attorney employed in relation to the same, had notice that there was such mistake, and that they afterwards had some agency, but this defendant is not informed how much, in causing the same to be sold as a part of said Dunbar's estate.

And this defendant further says, that he claims all the benefit and right to said undivided half which may be derived through a sale of the same to Joshua Hathaway, for certain taxes assessed in the county of Milwaukee for the year 1845, said sale having been made for the non-payment of said taxes, on the fifteenth of April, 1846, the payment of said taxes upon said half having been purposely omitted by said Hathaway, the agent of the parties interested therein under the conveyances of the said Montague and Holman, in order that a sale should be made to clear the title from any exceptions on account of taxes previously assessed, if any such exceptions existed, and the purchase of said Hathaway having been made for the benefit of those interested therein, as before stated, but without any supposition by any of those interested at that time, as this defendant believes, that there was any defect in the title to a full half of said quarter section, by reason of any mistake in said deed from Dunbar to Montague.

And this defendant says, in relation to most of the deeds and instruments herein mentioned, that he speaks of the same from information and belief, without inspection, and so far as they are deemed important, he asks that the instruments themselves, or authenticated copies thereof when produced, may be taken as part of this answer.

JOEL PARKER.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

Sworn and subscribed before me on this the third day of January, in the year one thousand eight hundred and fifty-one.

Witness my name, style, and seal of office.

J. H. BUCKINGHAM, [L. S.]
A commissioner for the State of Massachusetts, appointed by the governor of Wisconsin to administer oaths and affirmations, &c.

February 12, 1851, continued. March 8, 1851, continued. June 11, 1851, continued. Oct. 4, 1851, continued. March 12, 1852, continued. June 15, 1852, continued. Oct. 9, 1852, continued. February 14, 1853, continued. June 11, 1853, continued. October 8, 1853, continued. March 18, 1854, continued. June 3, 1854, continued. October 9, 1854, continued. March 17, 1855, continued. June 2, 1855, continued. November 16, 1855, continued. March 17, 1856, continued. June 7, 1856, continued.

October 29, 1856, continued. January 28, 1857, continued. April 3, 1857, continued. June 6, 1857, continued. August 15, 1857, continued. November 4, 1857, continued.

The counsel for the defendant then, further to maintain and prove the issue on his part, produced and read to the jury a deed made by Charles J. Kane and wife, and Henry P. Hubbell, to Alonzo L. Kane, dated June 8, 1855, duly executed, acknowledged and recorded, conveying to said Alonzo L. Kane all the right, title, and interest of said grantors in said deed to lot No. one of section twenty-one, town seven, range twenty-two east, in the city and county of Milwaukee, Wisconsin, except in that certain piece of land set off by the division adjoining the dam to be sold for purposes of water-power, and also all the interest of said parties in and to the south half of the northeast quarter of said section twenty-one, said interest, according to the division, being about 40½ acres.

The counsel for the plaintiff then, further to maintain and prove the issue on his part, and in the way of rebuttal to the testimony of the defendant, produced, and offered, and read in evidence to the jury the deposition of Joshua Hathaway, duly taken and returned to this court under and by virtue of a commission duly issued out of and under the seal of this court, which deposition, with the interrogatories on the part of the plaintiff and the cross-interrogaties on the part of the defendant, is as follows, to wit:

First interrogatory. Are you acquainted with the parties to this suit, and with the subject-matter of it?

Second interrogatory. Are you or have you been agent for parties claiming to own the northeast quarter of section No. twenty-one (21), township No. seven (7) north, of range No. twenty-two (22), in Milwaukee county? If so, state the names of the parties, the extent of their interests, and the time when you were such agent; state particularly the amount or portion of the land claimed by each of said parties.

Third interrogatory. Did you ever learn of any doubt or dispute as to the title of said land, or any portion of it?

Fourth interrogatory. Did you, while acting as agent for parties claiming to own an interest in the above lands, have any conversation with any person or persons relative to the title to said land or any part thereof?

Fifth interrogatory. Did you in any such conversation state to any person or persons the extent of the claim of the parties for whom you were agent in and to said land? If so, state with whom the conversation was held, and in whose presence it was, and what you stated to be the claim of parties for whom you were agent.

Sixth interrogatory. If at that time you had any further conversation relative to the title to said land, or any matter affecting the same, or at any other time had other like conversation, state fully

and particularly the conversation or conversations, and with whom and in whose presence they were held.

Seventh interrogatory. Do you know any other matter or thing pertaining to the matters in issue in this cause which is of interest or importance to the rights of either of the parties hereto? If so, state the same fully and particularly.

Cross-interrogatories to be attached to a commission to issue out of this court to take the testimony of Joshua Hathaway.

First. Did you, at or before the time that the defendant acquired title to the land in question in this suit, notify him, the defendant, that the plaintiff had or claimed title to same or any portion thereof?

Second. If you did so notify him, state if you told him how and through what source the plaintiff claimed. Did you notify him by authority of the plaintiff, or did you claim to do so? Did you warn him that he would buy at his peril?

Third. Did you at that time know or believe that the plaintiff held title or had any claim to said land, or any part thereof? If you did, what was the source of your knowledge or belief?

The several answers by the said witness to each of the said interrogatories, both to the direct and to the cross-interrogatories, which are as follows, to wit:

To the first interrogatory he answers: I am.

To the second interrogatory. Answer. From the year 1844 to the year 1848, including both years, but not since. I have been agent for Joel Parker (plaintiff), then claiming an undivided sixteenth; for the heirs of Phineas Fiske, then claiming an undivided three-sixteenths; and for Benjamin F. Adams, then claiming an undivided four-sixteenths of the northeast fractional quarter of section twenty-one in township seven north, of range twenty-two east, in the county of Milwaukee, which includes the premises in question in this suit.

To the third interrogatory. (Answer), I did.

To the fourth interrogatory. (Answer), I did.

To the fifth interrogatory. (Answer), I had a conversation with Mr. John H. Tweedy in connection with Mr. Marsh in relation to the interests of all the owners in said quarter section, more particularly of the southwest quarter or fraction of it; this was on the occasion of the administrator's public sale of the undivided half of the whole of the northeast quarter—I mean the administrator of William E. Dunbar, deceased. Mr. Marsh was acting as the attorney for Mr. and Mrs. Shaw and the heirs of Mr. Dunbar. Mr. Marsh came from Illinois to attend to the business, and applied to me for information and assistance in the same, which I rendered him at that time, and shortly previous. According to the best of my recollection I stated on that occasion that there was a further

interest than that then by the administrator offered for sale, to come in question; and I think I further remarked that it would have to be adjudicated. I am quite confident that I stated in the same connection, that the further interest alluded to arose through a discrepancy or contradictory description contained in one of Dunbar's deeds. I think I stated in the same connection that the half sold by the administrator at that time was all that the heirs of Dunbar were equitably entitled to, and that if it should turn out otherwise the administrator could make a further sale after the matter had been decided. I further stated that Mr. Dunbar, in one or more conversations with me in his lifetime, and subsequent to his conveyance to Montague, stated to me that he had disposed of one-half his interest in the quarter section, and that it was then held by the parties whom I represented as agent, as mentioned in my answer to the second interrogatory. At the time of my conversation with Mr. Marsh and Tweedy, I have been aware but a short time of the peculiarity of the deed from Dunbar to Montague, and my object in calling their attention to it was to promote the interest of all parties, my principals in particular, by facilitating the adjustment or confirmation of the title of the latter to the extent that I knew that they were entitled; and my confidence in Mr. Tweedy and Mr. Marsh was such, that I trusted to have their co-operation in accomplishing the object previous to my going into a partition among the owners. I am quite confident that I stated, in the course of the conversation, that the parties for whom I had been acting as agent, to wit, Parker and others, had all along supposed until quite recently that they owned and had good title to half of the land in question—that is to say, half of the whole quarter section. This was the substance of the conversation to the best of my recollection, and my recollection is that most of it transpired after the land had been struck off. Mr. Martineau and Mr. Charles J. Kane were present and listened to it, and according to the best of my recollection the latter asked questions of Mr. Tweedy occasionally during the conversation, who replied to him; and if I heard what passed between them at the time, I did not charge my mind with it. According to the best of my recollection Mr. Tweedy, Mr. Marsh, and myself went from the place of sale to Mr. Ogden's office and examined his abstract, and read over together the description or designation of tracts in the abstract of deed from Dunbar to Montague, and also from Montague to Chapin. I do not remember whether Mr. Kane or Mr. Martineau, or either of them, accompanied us to Mr. Ogden's office, or whether they were there with us or not. Whatever further conversation passed while at Mr. Ogden's office was merely matter of opinion as to construction to be put upon the deed from Mr. Dunbar to Montague.

I was acquainted with Mr. Dunbar from 1835 to the time of his

death; he was one of the squatters upon the public lands, and the N. E. quarter of sec. 21 before mentioned was known as his claim, and I have an indistinct recollection that Mr. Montague was a joint proprietor in that claim. Mr. Dunbar, in one of his visits to Milwaukee, had a conversation with me relative to said land, in which he stated that he had conveyed or disposed of an undivided one-half of the quarter section, and that he retained the other half; that the half disposed of was held by some of his former townsmen of Keene, in New Hampshire, naming Mr. Adams and Mr. Fiske, and possibly Mr. Parker. He informed me that he had kept up the taxes on his half, and I stated to him that, as agent for the other parties, I had paid taxes on the other half, which was the fact. We conversed freely on the subject, and it was for this purpose he called to see me. Soon after my attention was called to the designation of the land in Dunbar's deed to Montague, I wrote a full account of it to Judge Parker. Whether he replied immediately, or at all, I do not remember; but in our next interview, he said that he had or intended to notify Mr. Chapin to protect the title, and if he neglected or failed to do so he considered the recourse under his warranty of more value than so much of the land as the title to might prove deficient.

To the sixth interrogatory. (Answer), I may or may not have had other like conversations, but I cannot now remember them. If I had, I think none that could be considered evidence in the cause.

To the seventh interrogatory. (Answer), I do not, so far as I can judge to be "of interest or importance to the rights of either of the parties."

(*Cross-Interrogatories.*)

To the first cross-interrogatory. Answer. I do not know when the defendant did acquire title; if at the first administrator's sale, I have no recollection of seeing him there; but if Mr. Tweedy or Mr. Charles J. Kane represented him, or if he was present at the conversation with Mr. Marsh and Mr. Tweedy, I do consider that I amply notified him.

If the second administrator's sale is the time indicated in the interrogatory, I was not present at that sale, and do not think that I had any knowledge or intimation of it until it had taken place for some days. I have no recollection of speaking to Mr. Alonzo L. Kane on the subject until the partition was on the tapis; I had the impression that Charles J. Kane was the purchaser at the first administrator's sale, and had a like impression as to the second administrator's sale, and do not know to this day how the matter was managed; I only know that Alonzo L. Kane was a party to the partition and some subsequent suits. I resigned my agency over the lands before the partition suit was commenced.

To the second cross-interrogatory. Answer. In my conversation

with Messrs. Tweedy and Marsh, as mentioned in my preceding answers, I stated that the parties whom I represented as agent held or claimed to hold under Dunbar. I do not recollect whether I specified the intermediate links of title or not; the notice I gave, such as it was, was by general authority as agent. I think the owner could not have had time to give me any special instructions, my intimation to them of the discrepancy before alluded to being of recent occurrence. I consider that I gave sufficient warning to all who listened to the conversation at that time, but not in the language of the interrogatory.

To the third cross-interrogatory. Answer. I did at the time referred to "know" with reasonable certainty, and "believe" that the plaintiff held title or had some claim to said land or some part thereof, "and" the sources of my knowledge and belief are as follows, viz: his own declaration; that of a former grantor, whose interest would have been counter to his declaration; the public records, or reliable abstracts therefrom; general reputation, and the acts of the plaintiff for a number of years.

The counsel of the plaintiff, still further to maintain and prove said issue on his part, offered and introduced as a witness John H. Tweedy, who being duly sworn, testified:

That the original purchase at the administrator's sale by Charles J. Kane was made for the joint benefit of said Kane, James S. Brown and witness, all being equally interested in said purchase; that the title was taken in the name of Charles J. Kane for the benefit of the three; that the purchase at the guardian sale of an undivided fourth of the southwest forty acres of the tract was also so made for the joint benefit of the same parties and Carl Becman, and the title taken in same way for the benefit of all.

Witness has no recollection of any particular conversation with Charles J. Kane with reference to the difficulty in the title to the interest in the southwest forty acres; had talk with Mr. Ogden at Brown & Ogden's office; and made examination of the abstract and the records; do not know that Kane examined the records; the defendant Alonzo L. Kane had the whole management of the partition of lots one and six for his brother Charles J. Kane, acting as his agent in the matter while it was pending.

Witness also heard defendant Alonzo L. Kane talk about the suit relative to the southwest forty acres of the tract between the plaintiff in this case and Charles J. Kane and others, while it was still pending in the supreme court of the State of Wisconsin.

Witness, before the purchase by Charles J. Kane at the guardian's sale of the disputed interest in the southwest forty acres, had conversation with Mr. Hathaway, then agent for the plaintiff in this suit, and was informed by Mr. Hathaway that he, Mr. H., thought there was some mistake about the title to the southwest forty acres; that he, Mr. Hathaway, believed that the mistake was

in the deed from Dunbar to Montague, but Mr. Hathaway never told witness anything about the original agreement, the first deed and its destruction, nor did the witness know anything of the circumstances at that time.

On cross-examination by the counsel for the defendant, witness stated that after the purchase at the guardian's sale, the plaintiff in this suit came to Milwaukee, was at the house of witness, and something was said about the mistake in reference to the title of that tract, but plaintiff did not state fully nor particularly the grounds or nature of the mistake, and witness did not consider it proper then to question him about a disputed claim. In the purchase at the guardian's sale a full price was paid as for a good title.

Witness supposes that Charles J. Kane might have been present at all the conversations between Mr. Hathaway and himself, and still not have understood the nature of the difficulty in the title, which could not well be understood except by a lawyer.

The counsel for the plaintiff then offered, further to maintain and prove the issue on his part, to introduce F. Schumacher as a witness, to prove that the stakes finally placed by the commission in the second partition suit in circuit court for Milwaukee county offered in evidence here, were not placed at the corners indicated and fixed by the report of the first commissioners of partition; to the introduction of which testimony the counsel for the defendant did then and there object, which objection was sustained by the court, and said testimony was excluded; to which ruling of the court and rejection of evidence the counsel for the plaintiff did then and there except.

1. The counsel for the plaintiff then asked the court to charge and instruct the jury in this cause—

That the order and decree of the circuit court for Milwaukee county ratifying and confirming the report of the commissioners for partition, and making final partition of lots one and six in the northeast quarter of section twenty-one, town seven, range twenty-two, which had been read in evidence in this cause, is void.

Which instruction the court refused to give, and answered in the negative; to which refusal and answer the counsel for the plaintiff did then and there except.

2. The counsel for the plaintiff then asked the court to instruct the jury—

That the proceedings before the judge of probate of Milwaukee county, and the sale by the administrator of the estate of William E. Dunbar (of an undivided one-half of lot one, and the south half of the northeast quarter of section twenty-one, mentioned in the declaration in this cause), are void, there having been no guardian appointed for the infant heirs of said Dunbar, deceased.

Which instruction the court refused to give to the jury, and answered in the negative; to which refusal by said court so to in-

struct said jury, the counsel for the plaintiff did then and there except.

3. The counsel for the plaintiff then asked the court to instruct the jury—

That if the jury find from the evidence that William E. Dunbar purchased that part of the northeast quarter of section twenty-one, mentioned in the declaration, lying east of the Milwaukee river, and conveyed an undivided half thereof to Richard Montague by deed duly executed and delivered in 1836, that deed passed the title to said Montague to the land mentioned in said deed, although it may subsequently have been destroyed as stated in the deposition of said Montague, read in evidence in this cause, and that such destruction of the deed did not reconvey or revest the title to the land so conveyed in said Dunbar, but the same remained in said Montague.

Which said instruction the court refused to give; but the court did then and there charge and instruct the jury as follows:

The depositions of Richard Montague and Milton Kilbourn are not in evidence in this cause to prove the conveyance referred to in the instruction asked for by the counsel for the plaintiff, or to prove the destruction of that deed. Such testimony cannot be received to affect the title of the defendants claiming under a subsequent recorded deed between the same parties, and particularly after this length of time, and after descent cast by the decease of Dunbar upon his infant heirs, and under whom the defendant claims.

To which refusal and instruction of the court the counsel for the plaintiff did then and there except.

4. The counsel for the plaintiff then asked the court to instruct the jury—

That if the jury find from the evidence that conveyances of the land in dispute in this cause have been duly made and delivered from said Dunbar, through the various deeds given in evidence, to said plaintiff, then they must find for the plaintiff.

Which instruction the court refused to give, but answered it in the negative, in connection with the answer of the court to the third point.

To which refusal and instruction of the court the counsel for the plaintiff did then and there except.

5. The counsel for the plaintiff then asked the court to charge and instruct the jury as follows:

That if the jury find from the evidence in this cause that Charles J. Kane had notice of the rights of the plaintiff, or of those under whom he claims, as to the undivided one-eighth part of the southwest quarter of the northeast quarter of section twenty-one, mentioned in the declaration in this cause, or sufficient information to put him upon inquiry, at the time of or before the purchase by him

of said undivided one-eighth, and that said defendant had notice, at the time of or before he purchased said one-eighth, of the rights and claims of said plaintiff, or sufficient information to put him upon inquiry, then said Charles J. Kane, as well as said defendant, took said one-eighth subject to all the rights and claims of the said plaintiff.

Which instruction the court refused to give, to which refusal the counsel for the plaintiff did then and there except.

6. The counsel for the plaintiff then asked the court to instruct the jury—

That the purchasers at the guardian's sale, in evidence in this cause, took only the right, title and interest of the infant heirs of William E. Dunbar, deceased, and took subject to the rights and claims of the plaintiff and of those under whom he claims, whether their deeds or title were of record or not, and whether such purchasers at the guardian's sale, or any of them, had notice thereof or not.

Which instruction the court refused to give; but the court did then and there charge and instruct the jury as follows:

That the purchasers at the guardian's sale only purchased the interest of the heirs, subject to any title that may be established to the land, in law or equity, adversely.

To which refusal and instruction of the court so given to the jury the counsel for the plaintiff did then and there except.

7. The counsel for the plaintiff did then request the court to instruct the jury—

That the decree and proceedings of the circuit court for Milwaukee county, of the State of Wisconsin, in the case of Joel Parker vs. Charles J. Kane and others, in equity, given in evidence in this cause, do not bar this suit.

Which instruction the court refused; but the court did then and there charge and instruct the jury as follows, to wit:

If those proceedings finally disposed of the matter now before this court, the decree of the circuit court of the State against Parker in that court bars the suit to the extent of that decree, and no farther; to which refusal and instruction of the court so given to the jury the counsel for the plaintiff did then and there except.

The court did then and there further instruct and charge the jury as follows, to wit:

The plaintiff Parker was a party to the partition suit in the circuit court for Milwaukee county, the record of which is in evidence here. The decree of that court is conclusive in the matter before it, if the court had jurisdiction either of the party or the subject-matter.

The objection made to the sale by the administrator, and the proceedings of the probate court for the want of the appointment of a guardian, is not made by or on behalf of the heirs, who might have a right to complain, but by the plaintiff Parker, and this court will not sustain it.

To all of which last mentioned ruling, charge, and instruction of the court so given to the jury, the counsel for the plaintiff did then and there except.

The foregoing testimony is all the material evidence given at the trial of this cause, and the plaintiff prays that this his bill of exceptions may be signed, sealed and enrolled, and made a part of the record, and it is done.

Dated September 11th, 1857.

A. G. MILLER. [SEAL.]

And afterwards, to wit, on the third day of December, A. D. 1857, came the said plaintiff and filed his bond.

Bond.

Supreme Court of the United States.

JOEL PARKER vs. ALONZO L. KANE. } In Error.

Know all men by these presents, that we, Charles K. Wells and Jerome R. Brigham, as sureties for Joel Parker, are held and firmly bound unto the above named Alonzo L. Kane in the sum of five hundred dollars, to be paid unto the said Alonzo L. Kane, his executors or administrators; to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seal and dated this second day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas the above named Joel Parker hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the district court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above named Joel Parker shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

CHARLES K. WELLS, [SEAL.]
JEROME R. BRIGHAM, [SEAL.]

Sealed and delivered in presence of—
JOHN P. ILSLEY.

Dec. 3, 1857.

This bond and sureties approved.

(Signed) A. G. MILLER, *Judge*.

UNITED STATES OF AMERICA,
District of Wisconsin, ss.

I, John M. Miller, clerk of the district court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office, and being a full and complete exemplification of the record and proceedings in the case of Joel Parker against Alonzo L. Kane.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of said court at the city of Milwaukee, in the said district of Wisconsin, this seventh day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the said United States the eighty-second.

[L. S.]

J. M. MILLER, *Clerk*.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judge of the District Court of the United States of America for the district of Wisconsin, greeting:

[L. S.]

Because in the record and proceedings, as also in the rendition of a judgment, in a plea which is in the said district court of the United States of America for the district of Wisconsin, before you, between Joel Parker and Alonzo L. Kane, a manifest error hath happened, to the great damage of the said Joel Parker, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December instant in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this third day of December, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-second.

J. M. MILLER, *Clerk*.